

AGENDA ITEM

MAY 121 PROPOSED AMENDMENTS TO CALIFORNIA RULE OF COURT 9.21, RETURN FROM PUBLIC COMMENT

DATE: **April 12, 2011**

TO: **Members, Board of Governors;
Members, Board Committee on Regulation, Admissions and
Discipline Oversight**

FROM: **Jim Towery, Chief Trial Counsel**

SUBJECT: **Proposed Amendments to California Rule of Court 9.21
(Resignations with Disciplinary Charges Pending): Return
from Public Comment and Request for Approval for
Transmission to the Supreme Court**

EXECUTIVE SUMMARY

Rule 9.21 of the California Rules of Court specifies the requirements that apply when a member of the State Bar submits a written resignation while disciplinary charges are pending against the member. Rule 9.21 states requirements up to the point where the California Supreme Court acts to accept or reject the resignation. Among other things, the member must agree to be transferred to inactive membership status upon the filing of his or her resignation in the clerk's office of the State Bar Court.

This agenda item returns proposed amendments to Rule 9.21 from a 45-day period of public comment. The amendments address the membership status of a member whose resignation is not accepted by the Supreme Court, and also require a member who resigns with charges pending to waive confidentiality of any disciplinary or Client Security Fund matter pending against the member.

No public comments were received. It is recommended that the proposed amendments be approved for transmission to the Supreme Court.

Any questions or comments may be directed to Jim Towery at (415) 538-2063 or jim.towery@calbar.ca.gov, or Colin Wong at (415) 538-2233 or colin.wong@calbar.ca.gov, or Mary Yen at (415) 538-2369 or mary.yen@calbar.ca.gov.

BACKGROUND

This agenda item returns proposed amendments to California Rules of Court, Rule 9.21 (“Rule 9.21”) from a 45-day period of public comment. Rule 9.21 deals with a member’s resignation while disciplinary charges are pending against the member (“resignation”). No public comments were received.

It is requested that the Board of Governors approve the proposed amendments for transmittal to the California Supreme Court with a recommendation of approval.

ISSUE

Whether to approve proposed amendments to Rule 9.21 of the California Rules of Court for transmittal to the California Supreme Court with a recommendation of approval.

CONCLUSION

If the board committee and the Board of Governors concur with the proposed amendments to Rule 9.21, it would be appropriate to approve the proposed amendments and direct staff to transmit the proposal to the California Supreme Court with a recommendation of approval.

DISCUSSION

Rule 9.21 states the substantive and procedural requirements when a member of the State Bar submits a resignation while disciplinary charges are pending. Subpart (a)’s general provisions include a requirement that the member agree to be transferred to inactive membership effective on the filing of the resignation by the State Bar. Subpart (b) states the conditions and other terms of the resignation in a form format. The member must sign and date a written form resignation containing the conditions and terms as stated in subpart (b), and cannot substitute his or her own statement. Subpart (c) provides that the State Bar Court’s report with recommendation to the California Supreme Court to accept or reject the resignation must be made in light of nine grounds for rejection stated in subpart (d). Subpart (d) states the Supreme Court may make such orders as it deems appropriate, and lists the nine grounds for which the Supreme Court may reject the resignation based on the report of the State Bar Court.

This past year, a number of tendered resignations have not been accepted by the Supreme Court. Attention given to these rejected resignations showed that there is an ambiguity as to the membership status of members after their resignations are rejected because Rule 9.21 does address their membership status.

This proposal would add a new subpart (e), which begins with a statement that a member whose resignation with charges pending is not accepted by the Supreme Court remains on inactive status, and then specifies what must be done by the member, the Office of the Chief Trial Counsel (“OCTC”), and the State Bar Court if the member wishes to be restored to active status. The requirements in proposed subpart (e) are based on requirements stated in the Supreme Court’s orders for recently rejected

resignations. The form language in subpart (b) would also be amended to add a statement that if the Supreme Court does not accept the resignation, the member will remain an inactive member pending any further order of the State Bar Court or the Supreme Court.

The proposal would also amend subparts (a) and (b) to require the member to agree to waive the confidentiality of any pending disciplinary complaints, investigations or Client Security Fund (“CSF”) matters. By submitting a voluntary resignation, a member puts at issue the facts surrounding his or her pending disciplinary and CSF matters. Waiver is needed because the Review Department must consider all information in order to provide the Supreme Court with an accurate account of the circumstances surrounding the member’s resignation. Maintaining confidentiality of the information surrounding voluntary resignations with charges pending would undermine the public protection of the public, the courts and the legal profession. If the member had not resigned, in all likelihood information regarding pending disciplinary complaints, investigations and Client Security Fund matters would have been included in a Notice of Disciplinary Charges.

Proposed Rule 9.21 would be amended as follows (proposed new language is underlined):

Rule 9.21. Resignations of Members of the State Bar with Disciplinary Charges Pending

(a) General Provisions

A member of the State Bar against whom disciplinary charges are pending may tender a written resignation from membership in the State Bar and relinquishment of the right to practice law. The written resignation must be signed and dated by the member at the time it is tendered and must be tendered to the Office of the Clerk, State Bar Court, 1149 South Hill Street, Los Angeles, California 90015. The resignation must be substantially in the form specified in (b) of this rule. In submitting a resignation under this rule, a member of the State Bar agrees to be transferred to inactive membership in the State Bar effective on the filing of the resignation by the State Bar, and to waive the confidentiality of any disciplinary complaints, investigations or Client Security Fund matters pending against the member. Within 30 days after filing of the resignation, the member must perform the acts specified in rule 9.20(a)(1)-(4) and (b) and within 40 days after filing of the resignation, the member must file with the Office of the Clerk, State Bar Court, at the above address, the proof of compliance specified in rule 9.20(c). No resignation is effective unless and until it is accepted by the Supreme Court after consideration and recommendation by the State Bar Court.

(b) Form of Resignation

The member's written resignation must be in substantially the following form:

"I, [name of member], against whom charges are pending, hereby resign as a member of the State Bar of California and relinquish all right to practice law in the State of California. I agree that, in the event that this resignation is accepted and I later file a petition for reinstatement, the State Bar will consider in connection therewith all disciplinary matters and proceedings against me at the time this resignation is accepted, in addition to other appropriate matters. I also agree that the Supreme Court may decline to accept my resignation unless I reach agreement with the Chief Trial Counsel on a written stipulation as to facts and conclusions of law regarding the disciplinary matters and proceedings that were pending against me at the time of my resignation[.] I further agree that, on the filing of this resignation by the Office of the Clerk, State Bar Court, I will be transferred to inactive membership of the State Bar. On such transfer, I acknowledge that I will be ineligible to practice law or to advertise or hold myself out as practicing or as entitled to practice law. I further acknowledge that in the event the Supreme Court does not accept my resignation, I will remain an inactive member of the State Bar, pending any further order of the State Bar Court or Supreme Court. I further agree that, within 30 days of the filing of the resignation by the Office of the Clerk, State Bar Court, I will perform the acts specified in rule 9.20(a)-(b) of the California Rules of Court, and within 40 days of the date of filing of this resignation by the Office of the Clerk, State Bar Court, I will notify that office as specified in rule 9.20(c) of the California Rules of Court. I hereby waive the confidentiality of any disciplinary complaints, investigations or Client Security Fund matters pending against me."

(c) Consideration of Resignation by State Bar Court and Supreme Court

When the Office of the Clerk of the State Bar Court receives a member's resignation tendered in conformity with this rule, it must promptly file the resignation. The State Bar Court must thereafter consider the member's resignation and the stipulated facts and conclusions of law, if any, agreed upon between the member and the Chief Trial Counsel, and must recommend to the Supreme Court whether the resignation should be accepted. The State Bar Court's recommendation must be made in light of the grounds set forth in subsection (d) of this rule and, if the State Bar Court recommends acceptance of the resignation notwithstanding the existence of one or more of the grounds set forth in subsection (d), the State Bar Court's recommendation must include an explanation of the reasons for the recommendation that the resignation be accepted. The Office of the Clerk of the State Bar Court must transmit to the Clerk of the Supreme Court, three certified copies of the State Bar Court's recommendation together with the member's resignation, when, by the terms of the State Bar Court's recommendation, the resignation should be transmitted to the Supreme Court.

(d) Grounds for Rejection of Resignation by the Supreme Court

The Supreme Court will make such orders concerning the member's resignation as it deems appropriate. The Supreme Court may decline to accept the resignation based on a report by the State Bar Court that:

- (1) Preservation of necessary testimony is not complete;

(2) After transfer to inactive status, the member has practiced law or has advertised or held himself or herself out as entitled to practice law;

(3) The member has failed to perform the acts specified by rule 9.20(a)-(b);

(4) The member has failed to provide proof of compliance as specified in rule 9.20(c);

(5) The Supreme Court has filed an order of disbarment as to the member;

(6) The State Bar Court has filed a decision or opinion recommending the member's disbarment;

(7) The member has previously resigned or has been disbarred and reinstated to the practice of law;

(8) The member and the Chief Trial Counsel have not reached agreement on a written stipulation as to facts and conclusions of law regarding the disciplinary matters and proceedings that were pending against the member at the time the resignation was tendered; or

(9) Acceptance of the resignation of the member will reasonably be inconsistent with the need to protect the public, the courts, or the legal profession.

(e) Rejection of Resignation by Supreme Court

A member whose resignation with charges pending is not accepted by the Supreme Court will remain an inactive member of the State Bar. The member may move the Review Department of the State Bar Court to be restored to active membership, at which time the Office of the Chief Trial Counsel may demonstrate any basis for the member's continued ineligibility to practice law. The Review Department will expedite a motion to be restored to active membership. Any return to active membership will be conditioned on the member's payment of any dues, penalty payments, and restitution owed by the member.

It is believed that the proposed amendments to Rule 9.21 do not require any change in the Rules of Procedure of the State Bar of California. The existing provisions of the Rules of Procedure can be used if a member wishes to be restored to active status. A member's waiver of confidentiality comports with Rule 2302(b), which allows a member to waive confidentiality of disciplinary investigations and complaints. The member's waiver will permit OCTC to disclose otherwise-confidential information to the State Bar Court.

FISCAL / PERSONNEL IMPACT:

None known.

RULE AMENDMENTS:

None known.

BOARD BOOK IMPACT:

None known.

RECOMMENDATION

It is recommended that the board committee and Board of Governors approve the proposed amendments to Rule 9.21 of the California Rules of Court for transmittal to the California Supreme Court with a recommendation of approval.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Board Committee on Regulation, Admissions and Discipline Oversight agree with the recommended amendments to Rule 9.21, the following resolution would be appropriate:

RESOLVED, following publication for comment and no comments having been received, that the Board Committee on Regulation, Admissions and Discipline Oversight recommends that the Board of Governors approve the proposed amendments to Rule 9.21 of the California Rules of Court in the form attached in Attachment A and direct staff to transmit the proposal to the California Supreme Court with a request that the Court approve the amendments.

PROPOSED BOARD OF GOVERNORS RESOLUTION:

Should the Board of Governors concur with the recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, the following resolution would be appropriate:

RESOLVED, following publication for comment and no comments having been received, and upon recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, that the Board of Governors hereby approves the proposed amendments to Rule 9.21 of the California Rules of Court in the form attached in Attachment A and directs staff to transmit the proposal to the California Supreme Court with a request that the Court approve the amendments.

Attachment: Attachment A, Proposed Amendments to California Rule of Court 9.21