

AGENDA ITEM

MARCH 154

**State Bar Rule Revision
Title 3 – Limited Liability
Partnerships
Return from Comment**

DATE: February 19, 2010

TO: Members of the Board Committee on Member Involvement,
Relations and Services
Members of the Board of Governors

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

SUBJECT: **State Bar Rule Revision - Title 3 – Limited Liability Partnerships
Return from Public Comment**

EXECUTIVE SUMMARY

As part of a State Bar rules revision project begun in 2006, proposals to clarify the organization and language of State Bar rules for limited liability partnerships were presented to the Board Committee on Member Involvement, Relations and Services in November 2009 with a request that the committee authorize a period of public comment on the proposals. The Committee authorized a sixty-day public comment period that began November 16, 2009 and ended January 15, 2010. As no comments were received, staff requests that the Committee forward the proposed rules to the Board of Governors recommending that the board adopt them at its March 2010 meeting to become effective August 1, 2010 and that the board repeal the current rules for limited liability partnerships as of that date. The proposed rules would become part of Title 3 of the Rules of the State Bar, Programs and Services.

ISSUE

Whether the Board Committee on Member Involvement, Relations and Services should recommend that the Board of Governors adopt at its March 2010 meeting the proposed 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.

DISCUSSION

The Limited Liability Partnership Rules and Regulations were originally adopted by the Board of Governors in 1995 and were amended in 1997 and 2000. The proposed rules, drafted by State Bar rules revision staff working closely with staff for limited liability partnerships, would clarify the organization and language of the limited liability partnership rules. They 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.

Copies of the current and the proposed rules are attached. In the proposed rules, footnotes in Roman type are citations or cross-references to other rules and are intended to be part of any board-adopted version.

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 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.

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.”

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 the certification of limited liability partnerships are public information, except for correspondence, internal memoranda, complaints, and any other document for which disclosure is prohibited by law." 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.

Effective date of proposal

If the board adopts new rules for limited liability partnerships at its March 2010 meeting, staff requests that the proposed rules for limited liability partnerships become effective August 1, 2010 and that the current Limited Liability Partnership Rules and Regulations be repealed on that date.

FISCAL IMPACT

Adoption of the proposed rules would require no new resources.

BOARD BOOK IMPACT

None.

RULES/REGULATIONS IMPACT

The Rules of the State Bar, Title 3: Programs and Services

RECOMMENDATION

Having received no public comments, staff requests that the Committee on Member Involvement, Relations and Services recommend that the Board of Governors adopt the proposed rules for limited liability partnerships as Division 2, Chapter 3 of Title 3 of the Rules of the State Bar, Programs and Services.

PROPOSED BOARD COMMITTEE RESOLUTION

If the committee agrees with the staff recommendation, adoption of the following resolution would be appropriate.

RESOLVED, that the Board Committee on Member Involvement, Relations and Services recommends that following publication for comment and no comments having been received, the Board of Governors of the State Bar of California adopt, in the form attached, the proposed rules for limited liability partnerships as Division 2, Chapter 3 of Title 3 of the Rules of the State Bar, Programs and Services, to be effective August 1, 2010 and that the board repeal on that date the current Limited Liability Partnership Rules and Regulations of The State Bar of California.

PROPOSED BOARD OF GOVERNORS RESOLUTION

If the Committee on Member Involvement, Relations and Services recommends that the Board of Governors adopt the proposed rules for limited liability partnerships and the Board of Governors concurs with the recommendation, adoption of the following resolution would be appropriate.

RESOLVED, that upon the recommendation of Board Committee on Member Involvement, Relations and Services, the Board of Governors of the State Bar of California adopts, in the form attached, the proposed rules for limited liability partnership as Division 2, Chapter 3 of Title 3 of the Rules of the State Bar, Programs and Services, to be effective August 1, 2010 and repeals on that date the current Limited Liability Partnership Rules and Regulations of The State Bar of California.

Attachments

- A: Proposed Limited Liability Partnership Rules
- B: Current Limited Liability Partnership Rules and Regulations