

# AGENDA ITEM

OCT 114

**DATE:** September 24, 2012

**TO:** Members, Board Committee on Operations  
Members, Board of Trustees

**FROM:** Starr Babcock, General Counsel  
Dina E. Goldman, Senior Assistant General Counsel

**SUBJECT:** State Bar Rule 6.52 (A)(3), Technical Amendments

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## EXECUTIVE SUMMARY

This item seeks adoption of an amendment by the Board to State Bar Rule 6.52(A)(3) to correct a rule drafting error and to conform it to the language of State Bar Rule 6.51(B)(2) and similar provisions of the Bagley-Keene Act for adding an item to the agenda of a meeting holding a special meeting with less than 10 days notice.

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## BACKGROUND

On July 22, 2011, the State Bar's Board of Governors (now Trustees) adopted a set of amendments to the Bar's open meeting rules. The amendments implemented recommendations of the State Bar's Governance in Public Interest Task Force and then pending legislative proposal in Senate Bill No. 163 (2011-2012 Reg. Sess.), as amended July 13, 2011, § 28, that "the board shall ensure that its open meeting requirements ... are consistent with, and conform to, the Bagley-Keene Open Meeting Act." The amendments included among other things the adoption of Rules 6.51 and 6.52, which were based on similar provisions in the Bagley-Keene Open Meeting Act<sup>1</sup> that provide limited defined grounds for adding items to a meeting agenda and holding a special meeting with less than 10 days notice. As proposed, these two rules included identical requirements of a two-thirds vote by the board or board committee, or, if less than two-thirds of the members are present, a unanimous vote of those members present.

As presented to the Committee on March 22, 2011, Rule 6.52(A)(3) read:

At the commencement of a special meeting under this rule, the board or board committee must make a finding in open session that the delay necessitated by providing a ten day notice would cause a substantial

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<sup>1</sup> Gov. Code §§ 11125.3(a)(2), 11125.4(c).

hardship or that immediate action is required to protect the public interest. The finding must set forth the specific facts that constitute the hardship or impending harm to the public interest. ***The finding must be adopted by a two-thirds vote of the board or board committee, or, if less than two-thirds of the members are present, a unanimous vote of those members present.*** The finding must be posted on the State Bar Web site. Failure to adopt the finding terminates the meeting.

Attachment to Item III.A of Agenda of the Board Committee on Stakeholders, March 22, 2011. (Emphasis added.) This language was identical to that proposed in Rule 6.51(B)(2) for adding an item to a meeting agenda with less than 10 days notice and which the Board ultimately adopted on July 22, 2011. *Id.*; attachment 1 to Item 161 of Agenda of the Board of Governors, July 22, 2011<sup>2</sup>

However, as a result of a drafting error in the attachment in the subsequent agenda item, the version of Rule 6.52(A)(3), as presented to the Board for adoption, did not contain the language that was originally presented on March 22. Instead, the language was changed with no explanation, and as adopted, the pertinent part of Rule 6.52(A)(3) read: “The finding must be adopted by a two-thirds vote if all members are present, or by a unanimous vote if fewer are present.” Consequently, there has been some uncertainty in interpreting the rule regarding the number of Board members that must vote to adopt the special finding of necessity required to hold a special meeting.

The versions that were originally presented to the Board were based on similar language in the Bagley-Keene Act and required the vote to be adopted by a two-thirds vote of the body, or if less than two-thirds of the members were present, a unanimous vote of those present. There was never an intent for two different and conflicting requirements under the State Bar Rules.

## ISSUE

Should the Board adopt technical amendments to Rule 6.52(A)(3) to correct a clerical error?

## DISCUSSION

In order to correct the drafting error described above, this item proposes that the Board adopt the following revision to Rule 6.52(A)(3):

Rule 6.52

(A) Special Meetings

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<sup>2</sup> Rule 6.51(B)(2) states: “No item may be added to an agenda after the fifteen-day notice period unless ... ***two-thirds of the board or board committee, or if less than two-thirds are present, all those present, vote*** that there is a need to take immediate action subsequent to the agenda being posted pursuant to this rule.” (Emphasis added.)

...

(3) At the commencement of a special meeting, the board or board committee in open session must make a finding, supported by specific facts, that the delay necessitated by providing a ten-day notice would cause substantial hardship or that immediate action is required to protect the public interest. The finding must be adopted by a two-thirds vote ~~if~~ of the board or board committee ~~if~~ all members are present ~~or~~ if less than two-thirds of the members are present ~~by a unanimous vote if fewer~~ are present ~~of those present~~. The finding must be posted on the State Bar Web site. Failure to adopt the finding terminates the meeting.

Under the Bar's public comment rules, correction of clerical errors does not require that proposed amendments be sent out for public comment.

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

None

#### **RULE AMENDMENTS:**

State Bar Rule 6.52(A)(3).

#### **BOARD BOOK IMPACT:**

Tab 10, Article 1, Section 3.

#### **RECOMMENDATION**

It is recommended that the Board Operations Committee recommend that the Board of Trustees adopt the proposed amendment to State Bar Rule 6.52(A)(3), effective immediately.

#### **PROPOSED BOARD COMMITTEE RESOLUTION:**

Should the Board Committee on Operations agree with the above recommendation, the following resolution would be appropriate:

**RESOLVED**, that the Board Committee on Operations hereby recommends that the Board of Trustees adopt the proposed revision to Rule 6.52(A)(3), effective immediately.

#### **PROPOSED BOARD RESOLUTION:**

Should the Board of Trustees agree with the recommendation of the Board Committee on Operations, the following resolution would be appropriate:

**RESOLVED**, that on the recommendation of the Board Committee on Operations, the Board of Trustees hereby adopts the proposed revision to Rule 6.52(A)(3), effective immediately.