

AGENDA ITEM

MOC II D JULY 17 2014

DATE: July 10, 2014

TO: Members, Member Oversight Committee

FROM: Dina DiLoreto, Managing Director, Member Records & Compliance

SUBJECT: Proposed Changes to Special Master Rules Regarding Eligibility Requirements – Request for Public Comment

EXECUTIVE SUMMARY

This item requests a 45-day public comment period for a proposed amendment to the Rules of the State Bar, Title 7, Division 2, Rule 7.101, pertaining to special master eligibility requirements. The current rule requires that to be qualified to serve as a special master, an attorney must not have been disciplined during the preceding five years. The proposal suggests increasing this time period to the preceding “ten” years.

Questions on this item should be directed to Dina DiLoreto at (415) 538-2121 or Dina.DiLoreto@calbar.ca.gov .

BACKGROUND

Pursuant to Penal Code section 1524, the State Bar of California is responsible for maintaining a list of attorneys qualified to serve as "special master" to accompany peace officers in conducting searches for documentary evidence under the control of attorneys, physicians, psychotherapists and clergy members. At its' March 2014 meeting, the Board approved new special master rules, incorporating the old rules into the Rules of the State Bar. No substantive changes were made to the rules at that time, and the issue of revisiting special master eligibility requirements at a later date was discussed.

ISSUE

Whether to authorize a 45-day public comment period for the proposed amendment to the Rules of the State Bar, Title 7, Division 2, Rule 7.101, pertaining to special master eligibility requirements, which suggests increasing the length of time in which an attorney must not have been disciplined in order to qualify to serve as a special master from five years to ten years.

DISCUSSION

While the relevant statute specifies a procedure for conducting searches, the stated role of the State Bar is restricted to maintaining the list of attorneys qualified for appointment by the court to serve as a special master. One of the eligibility requirements spelled out in the current State Bar rules is that, at the time of application, an attorney must not have been disciplined in any court or jurisdiction during the preceding five years.

At the Member Oversight Committee's November and March meetings, a concern was raised that questioned whether five years was a sufficient length of time for an attorney to be without discipline before being listed as qualified to serve in such a position of public trust. Those members of the public whose sensitive information is being protected by the appointment of a special master (example: the clients or patients of an office being searched) are not the ones who select the special master. They must rely on the court and the State Bar's determination that the special master is qualified.

Staff is proposing that the eligibility rule be amended so that instead of five years, the requirement would be that the applying attorney have a discipline-free record for the preceding ten years.

Out of approximately 200 attorneys currently listed by the State Bar as special masters, five have discipline in their history. In all five cases the discipline is a reproof. Four of the five reproofs are more than 20 years old, and the fifth is 12 years old.

FISCAL / PERSONNEL IMPACT

None.

RULE AMENDMENTS

Proposed amendment to the Rules of the State Bar, Title 7, Division 2, Rule 7.101 (B) (1), as illustrated in Attachment A.

BOARD BOOK IMPACT

None.

RECOMMENDATION

Staff recommends that MOC authorize a 45-day public comment period for the proposed amendment to the Rules of the State Bar, Title 7, Division 2, Rule 7.101, pertaining to special master eligibility requirements, as illustrated in Attachment A. This amendment would increase the length of time in which an attorney must not have been disciplined in order to qualify to serve as a special master from five years to ten years.

PROPOSED BOARD COMMITTEE RESOLUTION

Should the Member Oversight Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Member Oversight Committee authorizes staff to make available for public comment for a period of 45 days the proposed amendment to the Rules of the State Bar, Title 7, Division 2, Rule 7.101 pertaining to special master eligibility requirements as presented this day; and it is

FURTHER RESOLVED, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed item.

ATTACHMENT

A: Special Master Rules with Proposed Change