

AGENDA ITEM

III.B. MARCH 2015

DATE: March 2, 2015

TO: Members, Board Executive Committee

FROM: Lawrence C. Yee, Acting General Counsel
Dina E. Goldman, Acting Chief Assistant General Counsel

SUBJECT: Revision to State Bar Rules Title 6 re Access to State Bar Records—Request to Release for Public Comment

EXECUTIVE SUMMARY

The California Public Records Act generally requires state and local agencies to disclose records to the public, upon request, except for those specifically exempted. As a judicial branch agency, the State Bar is exempt from the California Public Records Act. In addition, the State Bar is not subject to the provisions of California Rule of Court 10.500, which governs public access to judicial administrative records. However, requests for State Bar records can be subject to the common law right of access, which requires a balancing test to be applied for each record requested to weigh the public's interest in disclosure versus any interest in nondisclosure, including confidentiality of the document being sought. Although the State Bar routinely receives requests for records, the Bar does not have a comprehensive rule governing access to records, which sets forth procedures to govern requests for records and a list of which records are exempt from disclosure. In this item, the Executive Committee would authorize release for a 90-day public comment period a proposed new Division 3 to Title 6 of the State Bar Rules to govern Access to State Bar Records.

BACKGROUND

The California Public Records Act ("CPRA"), adopted in 1968, requires governmental records held by state and local agencies to be disclosed to the public, upon request, unless there is a specific reason not to do so. CPRA contains a specific list of exemptions detailing records that can be withheld from disclosure and also incorporates by reference other laws that require confidentiality. As a judicial branch agency, the State Bar is exempt from the definition of "state agency" and thus is not subject to the provisions of CPRA. (Cal. Gov't. Code § 6252(g).)

California Rule of Court 10.500, adopted in 2010, provides public access to judicial administrative records, upon request, unless there is a specific reason not to do so. Like CPRA, Rule 10.500 contains a specific list of exemptions of types of records that can be withheld from disclosure and also incorporates by reference other laws that require confidentiality. Rule 10.500 also specifically incorporates terms used in CPRA and provides that it should be interpreted consistently with the interpretation applied to terms under CPRA. Rule 10.500 does not apply to the State Bar.¹

Although the State Bar is not subject to the provisions of CPRA or Rule 10.500, it does routinely receive requests from the public for access to State Bar documents. Without a comprehensive rule that provides a procedure for responding to these requests and a list of records that are exempt from disclosure, the Bar is required to apply a balancing test to each request, weighing the public's interest in disclosure of a record against any countervailing interest, including confidentiality of a record sought.

ISSUE

Should the Executive Committee release the proposed rules governing Access to State Bar Records, in the form attached hereto for a 90 day public comment period?

CONCLUSION

Staff recommends that the Committee authorize release of the proposed rules for a 90 day public comment period.

DISCUSSION

Staff has drafted proposed rules to govern Access to State Bar Records, which would appear in the State Bar Rules as a new Division 3 of Title 6. The proposed rules are attached to this item as Exhibit 1. Similar to CPRA and Rule 10.500, the proposed rules governing Access to State Bar Records have been drafted to generally provide public access to State Bar administrative records, subject to specific exemptions and incorporating by reference other laws and rules which provide that records are confidential. The proposed rules incorporate a list of exemptions for State Bar records that are based on similar exemptions included in Rule 10.500 and CPRA. In addition, based on input from State Bar executive staff, the proposed rules contain additional proposed exemptions for particular categories of State Bar records that are maintained in confidence and should be exempt from disclosure. Lastly, the proposed rules provide a procedure to be followed when requests for State Bar records are made, which is consistent with the procedures set forth in CPRA and Rule 10.500.

¹ Title 10 of the California Rules of Court are adopted by the Judicial Council, which may adopt rules for court administration and rules of practice and procedure for the trial and appellate courts. Cal. Const. art. VI, § 6(d). Accordingly, Rule 10.500(c)(3) defines "judicial branch entity" to include only the Supreme Court, each Court of Appeal, each superior court, the Judicial Council, and the staff of the Judicial Council.

FISCAL / PERSONNEL IMPACT:

Following adoption, there will be potentially significant personnel costs associated with staff needed to monitor and respond to requests for access to State Bar records. However, adoption of the rule should reduce the demand for legal counsel with respect to such requests.

RULE AMENDMENTS:

New Division 3 of Title 6 of the State Bar Rules. New Rules 6.70 – 6.76.

BOARD BOOK IMPACT:

Revisions to Tab 11 and other sections as appropriate.

RECOMMENDATION

Staff recommends that the Board Executive Committee authorize circulation of the proposed rules governing Access to State Bar Records, attached as Exhibit 1, for a 90 day public comment period.

PROPOSED BOARD COMMITTEE RESOLUTION:

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

RESOLVED, that the Board Executive Committee hereby authorizes the release of the proposed rules governing Access to State Bar Records, attached as Exhibit 1, for a 90 day public comment period; 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.