

AGENDA ITEM

707 DEC 2016

DATE: November 29, 2016

TO: Members, Board Executive Committee

FROM: Leah Wilson, Chief Operating Officer

SUBJECT: State Bar of California's Conflict of Interest Code for Designated Employees, Proposed Revisions – Request for Public Comment

EXECUTIVE SUMMARY

This requests the Board Executive Committee to authorize a 30 day public comment period on annual amendments to the State Bar's Conflict of Interest Code ("Code") for Designated Employees. The Political Reform Act, Government Code § 81000 et seq. ("PRA"), requires the State Bar, as a public agency, to adopt a Code for officers, employees and consultants, who, during the course of their work for the State Bar, make or participate in making decisions that may have a material impact on the interests defined in the code ("Designated Employees"). The State Bar's Code includes a list of Designated Employee positions (Appendix A of the Code) that are subject to the Code and a list of Disclosure Categories (Appendix B of the Code) in which Designated Employees must disclose interests in compliance with the Code. Government Code § 87306 requires periodic revisions of the Code to assure that the list of Designated Employees and Disclosure Categories are accurate and to conform the Code to changes that may have occurred in the PRA or regulations of the California Fair Political Practices Commission ("FPPC").

In conformity with these requirements, the State Bar annually reviews its Code and circulates it for public comment in advance of its application for the upcoming year. Last year, the State Bar engaged in a material review of the Code, making substantive changes to the required Disclosure Categories and Designated Employees.

In 2014, Disclosure Categories were updated to reflect changes in the State Bar's operational functions since the Code was first adopted years ago. Last year, the Designated Employees were also expanded to require more reporting and disclosure than has historically been the case. This is the second year operating under the Code revisions from last year.

The State Bar proposes here to amend its Code to conform to Regulation 18730 of the FPPC.

Regulation 18730 replaces the customized code that has been used by the State Bar historically. There is not intended to be a material change in the substance of the Code.

Additionally, Designated Employees are updated to reflect current circumstances.

The 30 day public comment period is to begin on December 17, 2016 and expire on January 17, 2017. This will allow the item to return to the Board's February 2017 meeting for approval, followed by implementation beginning in March 2017. The 2017 compliance period begins in March and April.

BACKGROUND

The PRA requires state and local government agencies, such as the State Bar, to adopt and promulgate conflict of interest codes. The State Bar is also subject to the Conflict of Interest standards mandated by Business and Professions Code § 6035-6038. These sections conform to the definitions specified in Government Code § 87103.

Historically, the State Bar has reviewed its Code annually to update the Code and list of Designated Employees subject to the reporting requirements under the Disclosure Categories. Last year, the State Bar made material and substantive changes to the reporting categories, expanding the reporting requirements to a number of employees who previously had not been required to report under the PRA.

The PRA requires agencies to identify areas where persons who act on the agency's behalf must disqualify themselves from making decisions because of a financial conflict of interest. The PRA requires that agencies designate employees who must report particular financial interests because they make or participate in making decisions that are likely to have an impact on those financial interests. The State Bar identifies these employees and their reporting requirements on the list of Designated Employee positions. The Disclosure Categories, defined in the Code, indicate the subject matter areas in which the Designated Employees are authorized to make decisions and may be influenced by financial interests requiring disclosure under the Code.

2017 will be the fourth year of operation under the 2014 revisions to the Disclosure Categories and the second year of operation under last year's revisions to the Designated Employee list.

This year it is proposed that the State Bar adopt in place of its customized code the FPPC's Regulation 18730. The State Bar's customized code has always tracked the regulation which provides an "evergreen" automatically updated code. The benefit of adopting the Regulation over a customized code is that the Regulation will update automatically with FPPC changes in the Regulation, not requiring the State Bar to track those changes independently and separately incorporate them into a customized code.

Additionally, the Designated Employees have been updated to reflect current circumstances.

The FPPA and the State Bar's public comment rules (1.10-1.11 of the Rules of the State Bar) require that changes to the Code be circulated for public comment. Public comment is required when material changes are made to the Code or Disclosure Categories. The material change made here is the updated list of Designated Employees. A 30 day public comment period is requested, expiring on January 17, 2017. This allows the amended Code to come back to the Board for approval at its February 2017 Board meeting. Implementation of the amendment would take place no later than March 1, 2017, so that the Code can be distributed to employees by March 1, 2017, with a filing disclosure deadline of April 1, 2017.

ISSUE

Should the proposed revised Conflict of Interest Code and Designation of Employees be circulated for a 30 day public comment period?

CONCLUSION

The proposed revisions to the Conflict of Interest Code and Designation of Employees should be circulated for public comment to be considered by the Board at the end of the public comment period, along with any received public comment.

DISCUSSION

This year it is proposed that the State Bar adopt in place of its customized code the FPPC's Regulation 18730. The State Bar's customized code has always tracked the regulation which provides an "evergreen" automatically updated code. The benefit of adopting the Regulation over a customized code is that the Regulation will update automatically with FPPC changes in the Regulation, not requiring the State Bar to track those changes independently and separately incorporate them into a customized code.

Additionally, the Designated Employees have been updated to reflect current circumstances.

FISCAL / PERSONNEL IMPACT

None.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

None.

RECOMMENDATION

It is recommended that the Board Executive Committee authorize public comment on the amendments to the State Bar's Conflict of Interest Code, as set forth above.

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 authorizes staff to make available for a 30 day public comment period, the proposed revisions to the State Bar of California's Conflict of Interest Code for Designated Employees in the form attached here; and it is

FURTHER RESOLVED, that this authorization for release for public comment is not, and shall not be construed as an endorsement of the proposed item.

Attachments:

Attachment 1 – Current "Customized" Conflict of Interest Code

Attachment 2 – Proposed Code, Regulation 18730

Attachment 3 – Appendix A of the Code, Designated Employee Positions

Attachment 4 – Appendix B of the Code, Disclosure Categories