

AGENDA ITEM

November 111

DATE: November 4, 2011

TO: Members, Board Committee on Operations
Members, Board of Governors

FROM: Robert A. Hawley, Deputy Executive Director

SUBJECT: Rules and Regulations Pertaining to the Employment of
Confidential Employees: Amendment to Rules 19 [Holidays]; 15
[Hours of Employment]; 22 [Disability Leave]

Rules and Regulations Pertaining to the Employment of Executive
Staff: Amendment to Rules 15 [Holidays]; 12 [Disability Leave]

EXECUTIVE SUMMARY

Changes are proposed here for adoption by the Board of Trustees to the rules that regulate the non-union Confidential Employees and Executive Staff of the State Bar. Confidential Employee Rule 19 [Holidays] and Executive Staff Rule 15 [Holidays] are amended to confirm to the elimination of the Lincoln's Birthday holiday in 2009. Confidential Employee Rule 15 [Hours of Employment] is amended to eliminate compensatory time off for employees exempt from overtime compensation. Under the governing standards, there is no legal obligation to compensate exempt employees for overtime. Confidential Rule 22 [Disability Leave] and Executive Staff Rule 12 [Disability Leave] are amended to conform more closely to the standards of the California State Disability Insurance (SDI) program that Confidential Employees and Executive staff are excluded from.

BACKGROUND

In General

The terms and conditions of employment for State Bar Confidential Employees and Executive Staff are established by Rules and Regulations Pertaining to the Employment of Confidential Employees and the Rules and Regulations Pertaining to the Employment of Executive Staff first adopted in 1982. Confidential Employees are defined in Section 4 (E) of the Confidential Employee

Rules and in the Rules and Regulations for the Administration of Employer and Employee relations as follows:

“Confidential Employee shall mean an employee, regardless of classification or job title, who acts in the formulation, determination and effectuation of management policies in the field of employer employee relations or who assists such a person in a confidential capacity.”

The majority of the State Bar’s Confidential Employees are employed in the Offices of Human Resources, General Counsel, and the Executive Director Secretary. Each Senior Executive is assigned a Confidential Employee. There are also Confidential Employees in the Office of Finance’s payroll unit and in other strategic locations throughout the organization where the administration of employer-employee and labor relations occurs.

The key component of Confidential Employee status is that, like management employees, they are excluded from union representation and assist management in addressing union issues. The terms and conditions of employment for Confidential Employees are governed the Confidential Employee Rules adopted and amended by the Board of Governors and administered by the Executive Director.

The Executive Staff of the State Bar are the managers designated by the Executive Director in accordance with The Rules and Regulations for the Administration of Employer-Employee Relations (Employee Relations Rules) and the designation standards that incorporate the principles of the federal Fair Labor Standards Act (FLSA). The Employee Relations Rules define who qualifies for union bargaining unit membership and excludes managers and Confidential Employees. The FLSA defines what constitutes a management employee for the federal exemption from overtime entitlement.

The rules governing Confidential Employees and Executive Staff are amended here to conform to evolutionary changes in the management of the State Bar and the standards governing institutional administration of personnel.

Holidays

In 2009, as part of the union negotiations that year, the Board eliminated Lincoln’s Birthday as a State Bar holiday. The Confidential Employees Rules and Executive Staff Rules are conformed to that standard, which has been in place since 2010.

Compensatory Time for Overtime

Historically, employees (e.g., attorneys and high level administrative staff) exempt from overtime under the federal Fair Labor Standards Act (FLSA) 29 U.S.C. 201 *et seq.*, that governs the State Bar as a public entity, have been entitled to compensatory time off under the union Memoranda of Understanding (MOU's) and Confidential Employee Rules as compensation for overtime. This is being eliminated in the MOU's and is eliminated here for Confidential Employees as unnecessary and inconsistent with the standards governing exemptions from overtime.

Disability Leave

As part of California's State Unemployment Insurance program administered by the Employment Development Department, qualified employees state-wide receive State Disability Insurance (SDI) when disabled from work. This is payable for a maximum of 52 weeks, at 55% of salary. This was extended in 2002 to time off for care of a seriously ill child, spouse, parent, or domestic partner and to bond with a new born child.

Public agencies have the option to opt in or out of SDI. The State Bar's union bargaining unit employees have long been included in the SDI program. The State Bar's Executives and Confidential Employees have long been excluded from SDI. As a result, the State Bar provides a State Bar-funded short-term disability program and long-term disability insurance for Confidential Employees and Executive Staff set forth in Section 22 of the Confidential Employee Rules and Section 12 of the Executive Staff Rules. These specific rules have not been amended in decades and are amended here to bring them into general conformity with the terms of SDI as it has evolved over the years.

The amendments are set forth in Attachment 2.

FISCAL / PERSONNEL IMPACT:

The financial impact of these amendments depends upon the usage of disability leave. As the proposal here is to reduce the coverage amount, the proposed amendment result will result in a cost savings, not an expense. The personnel impact is as set forth above.

RULE AMENDMENTS:

The amendments are to the Executive Staff and Confidential Employee Rules, not to the policy or administrative rules of the Board.

BOARD BOOK IMPACT:

The change is to the Confidential Employee and Executive Staff Rules. These are not contained in the administrative manual or Board Policy Book.

RECOMMENDATION

State Bar management recommends that the Board Operations Committee and Board of Trustees approve the amendments to Section 19 [Holidays]; 15 [Hours of Employment]; Section 22 [Disability Leave] of the Rules and Regulations Pertaining to the Employment of Confidential Employees and to Section 15 [Holidays] and Section 12 [Disability Leave] of the Rules and Regulations Pertaining to the Employment of Executive Staff in the form attached. The following resolution is suggested:

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 of Trustee's Operations Committee recommends that the Board of Trustees amend the Rules and Regulations Pertaining to the Employment of Confidential Employees in the form attached hereto effective January 1, 2012; and it is

FURTHER RESOLVED, that the Board of Trustee's Operations Committee recommends that the Board of Trustees amend the Rules and Regulations pertaining to the Employment of Executive Staff in the form attached hereto effective January 1, 2012

PROPOSED BOARD RESOLUTION:

Should the Board concur with the Board Committee on Operations's recommendation, the following resolutions would be in order:

RESOLVED, that upon the recommendation of the Board Committee on Operations, the Board hereby amends the Rules and Regulations Pertaining to the Employment of Confidential Employees and the Rules and Regulations Pertaining to the Employment of Executive Staff in the form attached hereto effective January 1, 2012.