

AGENDA ITEM

NOV 113

DATE: October 19, 2011

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

FROM: Starr Babcock, General Counsel,
Mary Yen, Assistant General Counsel

SUBJECT: State Bar Rules reorganization and other non-material edits

EXECUTIVE SUMMARY

This memorandum identifies changes needed to improve the organization of the Rules of the State Bar and makes other non-material edits. Under the State Bar Rules, public comment is not required for any of the changes.

BACKGROUND

State Bar Rule 1.10 [Public comment], subsection (B)(1), provides that public comment is not required for changes to State Bar Rules that “correct clerical errors; clarify grammar; improve organization; conform to specific changes in a law; update references or citations; or make similar editorial changes.”

This memorandum recommends changes to improve the organization of Title 3 of the State Bar Rules, including moving a chapter to Title 7 and renumbering two sets of rules in Title 3. The memorandum also recommends a conforming change mandated by Senate Bill 163 (2011 Statutes, Chapter 417) to replace “Board of Governors” with “Board of Trustees” in one of the rules covered by this agenda item. Since the changes improve the organization of the rules or conform to specific changes in the law, public comment is not required.

DISCUSSION

1. Reorganization of chapters in Title 3.

In 2005, the State Bar of California launched a rules revision project to integrate all of its rules into a single structure and to recast the rules in clearer and simpler language. In July 2007, the Board adopted stylistic conventions and a comprehensive organizational

scheme that reorganizes more than two dozen sets of rules into seven Titles followed by the California Rules of Professional Conduct and four appendixes. Each title is organized by uniform subparts—divisions, chapters, and articles—depending on the complexity of the material.

- Title 1. Global provisions
- Title 2. Rights and responsibilities of members
- Title 3. Programs and services
- Title 4. Admissions and educational standards
- Title 5. Discipline
- Title 6. Governance
- Title 7. Miscellaneous provisions

Within a title, rules are designated by the number of the title and then numbered sequentially. Thus, Rule 3.25 is rule 25 in Title 3, and Rule 4.25 is rule 25 in Title 4. Because the period in a rule number is not a decimal point but only a device to separate title number from sequential rule number, Rule 3.25 appears in Title 3 before Rule 3.156. This approach is consistent with the numbering scheme used for the revised California Rules of Court since January 2007.

To afford flexibility in adding and deleting rules in the future, the revised rules leave a gap of at least five numbers between the last rule of an organizational component—whether a division, a chapter, or an article—and the first rule of the next component. To illustrate, Title 2 consists of rules on member rights and responsibilities. Division one of Title 2, which deals with the member record, consists of four rules numbered 2.1, 2.2, 2.3, and 2.4. Division two consists of seven rules that begin with 2.10. The gap of six numbers between the divisions provides a built-in buffer to accommodate division one additions, a device that minimizes the likelihood of renumbering adopted rules.

A master outline of State Bar Rules provides an architectural plan that is filled in as rules are revised. Relatively minor adjustments have been made to the plan as rules have been revised. Completing Title 3, programs and services, requires an organizational adjustment. Title 3 is a large title organized into five divisions: prospective members, attorney members, non-member attorneys, consumers, and providers of programs and services. Most of the rules in Title 3 have been revised and adopted by the board. Two sets of adopted rules, those rules for legal liability partnerships and lawyer referral services, are not yet effective, however, because law requires Supreme Court approval, which is pending. Two other sets of rules those for legal specialization and fee arbitration, are being drafted.

Drafting the rules for legal specialization and fee arbitration has disclosed that some chapters of Title 3 need to be re-ordered to allow built-in number buffers for future changes. In Title 3, division 2, six chapters need to be reordered; chapter 5 (“reserved”) can be eliminated; and chapter 7 (“special masters”) is moved to Title 7, miscellaneous provisions, where it becomes division 2. In division 5, the only change is switching the

order of chapter 3 (“legal specialization certification programs”) and chapter 4 (lawyer referral services”).)

Appendix A identifies the changes in Title 3 chapter numbers and the movement of special masters to Title 7 as division 2.

2. Renumbering of two sets of rules in Title 3 and replacing “Board of Governors” with “Board of Trustees” in one of the rules.

In Title 3, two sets of revised rules adopted by the board need renumbering. The two sets of rules are in division five: Providers of continuing legal education and Lawyer referral services. Renumbering will increase the numbers allocated for these rules, which should preclude the need to renumber when new rules are added. Changing the numbers has negligible impact on the programs. There are only six rules that apply to providers of continuing legal education. The revised rules for lawyer referral services have been adopted by the board but are not effective until approved by the Supreme Court. That approval is pending.

Appendix B identifies the new numbers for the rules for providers of continuing legal education. Re-numbering is the only change

Appendix C identifies the new numbers for the rules for lawyer referral services. In addition, in re-numbered Rule 3.827 a reference to the “Board of Governors” should be changed to “Board of Trustees” in accordance with Senate Bill 163, which renames the “Board of Governors” as “Board of Trustees” in the State Bar Act (Business and Professions Code §§ 6000-6238). Appendix C shows both of these changes.

EFFECTIVE DATE OF PROPOSAL:

The changes identified in Appendixes A and B will be effective upon adoption by the Board.

The changes to the lawyer referral services rules identified in Appendix C will not be effective until the Supreme Court approves the revised rules for lawyer referral services.

FISCAL / PERSONNEL IMPACT:

None.

BOARD BOOK IMPACT:

None known.

RULES IMPACT:

As identified in Appendix A:

Title 3 Division 2, reorganize as Chapter 1, Sections; Chapter 2, Legal specialization; Chapter 3, Law corporations; Chapter 4, Limited liability partnerships; Chapter 5, Lawyer assistance program; Chapter 6, Pro bono practice attorneys; and delete former Chapter 5, Reserved, and former Chapter 7, Special masters.

Title 3, Division 5 reorganize as Chapter 1, Providers of continuing legal education; Chapter 2, Legal services trust fund; Chapter 3, Lawyer referral services; Chapter 4, Legal specialization certification programs.

Title 7, add new Division 2, Special masters.

As identified in Appendix B:

Title 3, Division 5, renumber rules in Chapter 1, Providers of continuing legal education, as rules 3.600-3.603 and 3.620-3.621.

As identified in Appendix C:

Title 3, Division 5, renumber rules in Chapter 3, Lawyer referral services, as rules 3.800-3.808 and 3.821-3.829 and replace "Board of Governors" with "Board of Trustees" in rule 3.827.

RECOMMENDATION:

It is recommended that the changes proposed in this agenda item, as shown on Appendixes A , B, and C, be adopted.

PROPOSED BOARD COMMITTEE RESOLUTION:

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

RESOLVED, that no public comment being required, the Board Committee on Operations recommends that the Board of Governors adopt the organizational changes to Title 3 and Title 7 of the Rules of the State Bar identified in Appendix A and the changes to the rule numbers for providers of continuing legal education identified in Appendix B, in the form attached, to be effective immediately; and it is

FURTHER RESOLVED that no public comment being required, the Board Committee on Operations recommends that the Board of Governors adopt the changes to the rules for lawyer referral service rules identified in Appendix C, in the form attached, and direct staff to transmit the changes identified in Appendix C to the California Supreme Court for consideration and approval.

PROPOSED BOARD RESOLUTION:

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

RESOLVED, that no public comment being required and upon the recommendation of the Board Committee on Operations, the Board of Governors hereby adopts the organizational changes to Title 3 and Title 7 of the Rules of the State Bar identified in Appendix A and the changes to the rule numbers for providers of continuing legal education identified in Appendix B, in the form attached and made a part hereof, effective immediately; and it is

FURTHER RESOLVED that no public comment being required and upon the recommendation of the Board Committee on Operations, that the Board of Governors hereby adopts the changes to the lawyer referral service rules identified in Appendix C, in the form attached and made a part hereof, and directs staff to transmit the changes identified in Appendix C to the California Supreme Court for consideration and approval.

Attachments

Appendix A: Title 3 and Title 7 organizational changes

Appendix B: Title 3 rule number changes for providers of continuing legal education

Appendix C: Title 3 rule number changes for lawyer referral services and replace “Board of Governors” with “Board of Trustees” in re-numbered rule 3.827