

AGENDA ITEM

DATE: December 5, 2011

TO: Members of the Board Committee on Operations

FROM: Starr Babcock, General Counsel
Lawrence C. Yee, Chief Assistant General Counsel
Cynthia Abramov, Assistant General Counsel

SUBJECT: The State Bar of California's Conflict of Interest Code for Designated Employees, Proposed Revisions – Request 30-Day Public Comment

EXECUTIVE SUMMARY

This agenda item requests 30-day public comment on amendments to the State Bar's Conflict of Interest Code for Designated Employees. The Political Reform Act ("Act") (Gov. Code §§ 81000 et seq.) requires that the State Bar adopt a Conflict of Interest Code ("Code") for officers, employees or consultants who, during the course of their work for the State Bar, either make or participate in the making of decisions that may have a material effect on their financial interests ("Designated Employees"). The State Bar's Code includes a list of Designated Employee positions that are subject to the Code and a list of Disclosure Categories of financial interests that designated employees must disclose. Government Code section 87306 requires periodic revision of the Code in order to update the lists of Designated Employees and Disclosure Categories and to conform the Code to changes in the Act or regulations of the California Fair Political Practices Commission ("FPPC").

In conformity with these requirements, amendments are recommended to update designated employee positions that have been added, eliminated, moved within the organization, or whose duties have changed. There are no changes in Act or FPPC regulations that require other conforming changes to the State Bar's Code or the list of Disclosure Categories.

The 30-day public comment period would begin on December 15, 2011 and expire on January 14, 2012. This will allow the item to return to your February 2012 meeting for approval, followed by implementation beginning in March 2012.

Any questions or comments may be directed to Cynthia Abramov at (415) 538-2589 or at cynthia.abramov@calbar.ca.gov.

BACKGROUND

PROPOSED REVISIONS TO THE LIST OF DESIGNATED EMPLOYEES, THE DISCLOSURE CATEGORIES, AND THE CODE

The Political Reform Act (“Act”) requires state and local government agencies, such as the State Bar, to adopt and promulgate conflict of interest codes. The Act also requires agencies to revise their codes to reflect amendments to the mandatory standards set forth in the Act¹, to implement regulations adopted by the FPPC, or to update a list of designated employees who are subject to the code or a list of disclosure categories for each designated employee position.

Under the Act, agencies must identify situations where persons who act on the agency’s behalf must disqualify themselves from decision-making because of a financial conflict of interest. The Act requires that agencies identify designated 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 assigned reporting requirement on the list of Designated Employee Positions. Assigned disclosure categories are adjacent to each employee position on the list. Each disclosure category is represented by a number, which is the number of that disclosure category on the list of Disclosure Categories. Designated employees must disclose financial interests listed in the assigned disclosure category or categories for their position.

The lists for Designated Employee Positions (**Appendix A**) and Disclosure Categories (**Appendix B**) are part of the State Bar’s Code. Under the Act, the State Bar is required to periodically add, modify, or delete designated employee positions or disclosure categories based on changes in employee positions or responsibilities.

ISSUE

PUBLIC COMMENT

The Fair Political Practices Act and the State Bar’s public comment rules (Rules 1.10 and 1.11 of the Rules of the State Bar) require that material changes to the Code be circulated for public comment.²

A 30-day public comment period would expire on January 14, 2012, which gives sufficient time for public comment and preparation of an agenda item requesting action

¹ The State Bar is also subject to the conflict of interest standards mandated by Business and Professions Code sections 6035-6038. Section 6036 conforms to the definition of financial interest to that which is specified in Government Code section 87103.

² Public comment is not required to correct clerical errors; clarify grammar; improve organization; conform to specific changes in a law; update references or citations; or make similar editorial changes. Title 1, rule 1.10(B), Rules of the State Bar. However, for administrative ease, these changes are included together with material changes published for public comment.

at the February 2012 Board meeting. Implementation of revisions must take place in February so that the Code can be distributed to employees by March 1, 2012. The deadline for filing disclosure statements under the Code is April 1, 2012.³

CONCLUSION

None.

DISCUSSION

A. Revisions to the List of Designated Employees

The revisions in this agenda item relate to the list of Designated Employee Positions (see **Appendix A**). Proposed revisions reflect the following changes in the organizational structure or designated employee positions in the State Bar:

- Adding the position of Consultant to Chief Trial Counsel to the Office of the Chief Trial Counsel. (See Appendix A, § III.)
- Eliminating one Senior Administrative Assistant position from the Director of Administration, Member Services. (See Appendix A, § VI.)
- Adding the positions of Director, Budget & Performance Analysis, and Budget and Performance Analyst to the Office of Administration & Finance. (See Appendix A, § VIII.)

B. No Revisions to the State Bar's Code or List of Disclosure Categories

The FPPC has not indicated that any changes will be required for the Code in 2011. Under pertinent statutes and regulations⁴, every two years the FPPC adjusts the gift limitation governing Sections 8.1 and 9 of the State Bar's Code. The current two-year aggregate gift limitation of \$420 per year will continue in effect through December 31, 2012.⁵ Section 8.1 deals with prohibitions on receipt of gifts in excess of the gift limitation amount, and Section 9(e) deals with disqualification based on an aggregate gift amount. Accordingly, no changes are recommended for the Code.

No changes are recommended for the Disclosure Categories.

³ See Appendix C, State Bar's Conflict of Interest Code for Designated Employees, section 5(c).

⁴ Government Code sections 89103(e), 89503 and 2 Cal. Code Regs. Sections 18730, 18940.2. Under Government Code section 89503(f), the FPPC must adjust the gift limitation on January 1 of each odd-numbered year to reflect changes in the California Consumer Price Index ("CPI") rounded to the nearest ten dollars.

⁵ The formula used to calculate the adjusted gift limit is at 2 Cal. Code Regs. Section 18940.2, which was amended in August 2010, effective January 1, 2011, to retain the annual gift limit at \$420 until December 31, 2012.

FISCAL / PERSONNEL IMPACT:

None..

RULE AMENDMENTS:

None..

BOARD BOOK IMPACT:

None.

RECOMMENDATION

The Office of General Counsel recommends that the Board Committee on Operations authorize public comment on amendments to the State Bar's Conflict of Interest Code for Designated Employees.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Board Committee on Operations. agree with the recommendation to authorize public comment on amendments to the State Bar's Conflict of Interest Code for Designated Employees, adoption of the following resolution would be appropriate:

RESOLVED, that the Board Committee on Operations 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 hereto; 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.

Enclosures:

Appendix A – Designated Employee Positions

Appendix B – Disclosure Categories

Appendix C – Conflict of Interest Code