

AGENDA ITEM

DATE: October 29, 2012

TO: Members, Board Committee on Operations

FROM: Starr Babcock, General Counsel
Dina E. Goldman, Senior Assistant General Counsel

SUBJECT: Open Meeting Rules, Title 6, Chapter 1, Proposed Amendments, Request to Release for Public Comment

EXECUTIVE SUMMARY

At its October meeting, the Board Operations Committee considered releasing for public comment a proposed amendment to the State Bar's open meeting rules regarding attendance at Board Committee meetings by Board members who are not members of the committee. The Operations Committee directed staff to rework the proposal and to present it at the November meeting. This item presents revised proposed amendments to the Bar's open meeting rules. As revised, the amendments would permit a quorum of the Board to attend closed sessions of Board Committees on those grounds permitted for the full Board under Business and Professions Code section 6026.5, but would not allow attendance of a quorum of the Board at closed sessions of committees authorized under Rule 6.55 (A) (1) – (3). The proposed amendments also provide that joint sessions of the Board of Trustees and Board Committees may be noticed in accordance with the provisions of the State Bar's open meeting rules.

It is recommended that the revised amendments be released for public comment.

BACKGROUND

In October, the Board Operations Committee considered releasing for public comment proposed amendments to the State Bar's open meeting rules which would limit more than a quorum of Board members from attending closed session of Board Committees of which they are not members. At that meeting, the Board Operations Committee asked that staff rework the proposed amendments and prepare a new proposal for its November meeting.

ISSUE

Should the Board Operations Committee release for public comment the revised proposal for amendments to the Bar's open meeting rules attached as Exhibit A?

DISCUSSION

The Bar's open meeting rules for Board Committees allow Board of Trustees members who are not members of a committee to attend and participate, but not vote, in committee meetings, including closed sessions of the committee. Because the State Bar's open meeting rules allow Board Committees to meet in closed session on grounds broader than what is permitted for the full Board under Business and Professions Code section 6026.5, this can create a situation where a majority of the Board of Trustees is meeting in a closed session prohibited by the statute.

Both the Brown and the Bagley Keene Acts allow a majority of the members of a governmental body to attend meetings of a standing committee of that body, but only if they attend as observers and do not participate. Cal. Govt. Code §§ 54952.2(c)(6)¹, 11122.5(c)(6)². However, under both acts, the same grounds for closed session apply to the meetings of the legislative body and its standing committees. Consequently, under the Bagley-Keene Act or the Brown Act, attendance of non-committee members does not create the potential of an impermissible closed meeting by the full body.

This item proposes amendments to State Bar Rule 6.50 which will limit Board members who are not members of Board Committees from attending closed sessions of these committees authorized under Rule 6.55 if their attendance would create a quorum of the Board in the committee meeting, but provide that board members may attend closed sessions of committees permitted under Business and Professions Code section 6026.5. In addition, an amendment to Rule 6.51 is proposed to allow joint sessions of the Board and Board Committees to be held when properly noticed under the Rules. Thus, under the proposed new rules, when a joint session of the Board and a Board Committee is noticed, members of the Board will be allowed to attend and participate in all portions of a Board Committee meeting, except for closed sessions specially authorized under Rule 6.55(A) (1) – (3).

FISCAL / PERSONNEL IMPACT:

None

RULE AMENDMENTS:

State Bar Rules 6.50, 6.51, and 6.55.

¹ Gov. Code § 54952.5(c)(6) permits "[t]he attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers."

² Gov. Code § 11122.5(c)(6) permits "[t]he attendance of a majority of the members of a state body at an open and noticed meeting of a standing committee of that body, if the members of the state body who are not members of the standing committee attend only as observers."

BOARD BOOK IMPACT:

Tab 10, Article 1, Section 3.

RECOMMENDATION

It is recommended that the Board Operations Committee release the proposed amendments to Title 6 of the State Bar Rules, attached as Exhibit A, for public comment.

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 Committee on Operations releases the proposed amendments to Title 6 of the State Bar Rules, attached as Exhibit A, for a 45 day public comment period; and it is

FURTHER RESOLVED, that this authorization for public comment circulation shall not be construed as a statement of approval of the proposed revisions.