

AGENDA ITEM

DATE: November 1, 2012

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 a 30-day public comment period 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 November 20, 2012 and expire on December 19, 2012. This will allow the item to return to your January 2013 meeting for approval, followed by implementation beginning in February 2013.

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 November 20, 2012, which gives sufficient time for public comment and preparation of an agenda item requesting

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.

action at the January 2013 Board meeting. Implementation of revisions must take place in February so that the Code can be distributed to employees by March 1, 2013. The deadline for filing disclosure statements under the Code is April 1, 2013.³

DISCUSSION

A. Revisions to the List of Designated Employees

The revisions in this agenda item relate to changes in the list of Designated Employee Positions (see **Appendix A**). The assigned disclosure categories are listed adjacent to the employee position on the list. Proposed revisions depict the current organizational structure and designated employee positions in the State Bar. The reorganization earlier this year resulted in many designated employee positions retitled, disclosure categories assigned to certain positions modified, new employee positions created, and existing designated employee positions eliminated.

1. The following positions were **added** based on a reasonable foreseeability that employees in these positions will make or participate in the making of decisions that may have a material effect on their financial interests:
 - **Assistant Secretary** to the Office of the Executive Director (See Appendix A, I.)
 - **Program/Court Systems Analyst** to the Office of Communications & Information Services (See Appendix A, I.)
 - **Administrative Specialist, Confidential** to the Office of Chief Financial Officer (See Appendix A., III.)
 - **Director, Finance/Controller** to the Office of Finance/General Services/ Member Information (See Appendix A., III.)
 - **Director, Project Management** to the Office of Finance/General Services/ Member Information (See Appendix A., III.)
 - The titles of Deputy Director Operations LA and Deputy Director Operations SF were combined into one position of **Deputy Director, General Services** (See Appendix A, III.)
 - The positions of Section Chief, Administration and Section Chief, Examinations Grading under the Office of Admissions, Administration were combined into one position of **Section Chief** (See Appendix A, I.)
 - The positions of Section Chief, Application Preprocessing, Section Chief, Eligibility, and Section Chief, Applicant Services under the Office of Admissions, Operations & Management were combined into one position of **Section Chief** (See Appendix A., I.)
2. The following designated employee positions were **eliminated** or combined to form new positions:

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

- Editor/General Manager CalBar Journal, from the Director of Media Services & Information.
 - Publication & Production Assistant from the Director of Media Services and Information.
 - Deputy Director Operations – LA
 - Deputy Director Operations - SF
 - Consultant to Chief Trial Counsel from the Office of the Chief Trial Counsel
 - One Section Chief position from the Director of Operations & Management – LA.
 - Section Chief, Administration from the Office of Admissions
 - Section Chief, Examinations Grading from the Office of Admissions
 - Senior Executive, Member Services from the formerly titled Office of Member Services
 - Section Chief, Application Preprocessing from the Office of Admissions
 - Section Chief, Eligibility from the Office of Admissions
 - Section Chief, Applicant Services from the Office of Admissions
 - Special Assistant to the Director of LAP, from the formerly titled Office of Member Services
 - Clinical Director of the LAP, from the formerly titled Office of Member Services
 - Assistant General Counsel from the Office of General Counsel.
3. The following designated employee positions had their positions **re-titled, modified, or transferred** from one office to another:
- The title of *Executive Director & Secretary* has been changed to **Executive Director/Chief Executive Officer (CEO)**
 - The title of *Deputy Executive Director* has been changed to **Deputy Executive Director/Deputy Chief Executive Officer (DCEO)**
 - The title of *Manager Planning and Administration* has been changed to **Managing Director, Planning & Administration**
 - The title of *Director Office of Legal Services* has been changed to **Senior Director, Administration of Justice**, with a Disclosure Category 1.
 - The title of *Director of Media Services & Information* has been changed to **Director, Communications & Information Services**
 - The title of *Manager Human Resources* has been changed to **Director, Human Resources & Labor Relations**
 - The title of *Director Operations* has been changed to **Director, General Services**

- The position of **Senior Librarian/Archivist** was transferred to the Office of General Counsel.
- The title of *Manager Central Administration* has been changed to **Supervisor, Administrative Services**
- The title of *Administrative Officer* has been changed to **Senior Director, State Bar Court**
- The title of *Senior Executive Admissions* has been changed to **Senior Director, Admissions**
- The title of *Director for Educational Standards* has been changed to **Director, Educational Standards**
- The title of *Director for Examinations* has been changed to **Director, Examinations**
- The title of *Director for Legal Specialization* has been changed to **Director, Legal Specialization**
- The title of *Section Chief, Legal Specialization* has been changed to **Section Chief**
- The title of *Director for Administration* has been changed to **Director, Admissions Administration**
- The title of *Director for Moral Character Determinations* has been changed to **Director, Moral Character Determinations**
- The title of *Section Chief, Moral Character Determinations* has been changed to **Section Chief**
- The title of *Director Operations & Management-LA* has been changed to **Director, Operations & Management**
- The title of *Section Chief, Examination Administration* has been changed to **Section Chief**, with modification of reporting categories
- The title of *Director Administration, Member Services* has been changed to **Managing Director, Member Records & Info Services**
- The title of *Director Section Education & Meeting Services* has been changed to **Senior Director, Education**
- The title of *Manager Section Education & Meeting Services* has been changed to **Managing Director, Section Education & Meeting Services**
- The title of *General Counsel* has been changed to **Chief Legal Officer**
- The title of *Managing Director of Administration* has been changed to **Director, Administration**
- The title of *Senior Executive for Finance/CFO* has been changed to **Chief Financial Officer**
- The title of *Manager Finance* has been changed to **Finance Manager**
- The title of *Senior Executive for Information Technology* has been changed to **Senior Director, Information Technology**

- The title of *Manager Systems Development* has been changed to **Managing Director, Systems Development**
- The title of *Manager Telecommunications* has been changed to **Managing Director, Telecommunications**
- The title of *Manager Information Technology/Systems Projects* has been changed to **Managing Director, Information Technology/Systems Projects**

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

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 FPPC has proposed an adjustment to the gift limit amount for the years 2013 and 2014 from \$420 to \$440. However, as of the date of this item, the FPPC's proposal has not been approved and the annual gift limit of \$420 remains in effect until December 31, 2012. Section 8.1 of the State Bar Code 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.

No changes are recommended for the Disclosure Categories.

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.

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.

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