

AGENDA ITEM

DATE: August 26, 2013
TO: Members, Board Committee on Operations
FROM: Robert A. Hawley, Deputy CEO/Deputy Executive Director
SUBJECT: Proposed New California Rules of Court, Rule 9.4, Oath Required on Admission to Practice Law – Request for Public Comment

ATTACHMENTS:

- 1) Board Agenda Item JULY 113
- 2) Proposed New Rule of Court, Rule 9.4

EXECUTIVE SUMMARY

The State Bar is considering proposed new Rule of Court 9.4. This rule would append a courtesy and professionalism statement to the oath required to be taken by persons who are certified by the Supreme Court for admission to practice law. This agenda item seeks approval to circulate the proposed new rule for a 30-day public comment period. If ultimately adopted by the Board of Trustees (“Board”), a recommendation would be submitted to the Supreme Court requesting approval of the new rule.

Members of the Board who have questions about this agenda item may contact Deputy Executive Director Robert A. Hawley at Robert.Hawley@calbar.ca.gov, (415) 538-2277.

BACKGROUND:

At the July 18 – 19, 2013 meeting, the Board endorsed the concept of an amendment to the attorney oath that would add aspirational professionalism commitments. A copy of the July agenda item is provided as Attachment 1 and sets forth the relevant background. Since the July meeting, the State Bar has worked with Judicial Branch staff to develop a proposal to circulate for public comment for a new Rule of Court that implements the courtesy and professionalism statement as a new sentence added to the attorney oath.

ISSUE:

Whether the proposed new Rule of Court, rule 9.4 should be circulated for a 30-day public comment period.

SUMMARY OF PROPOSAL:

The following language is proposed for the new courtesy and professionalism statement: “As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity.” If added to the existing language, the entire attorney oath would be the following:

I solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of an attorney and counselor at law to the best of my knowledge and ability. As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity.

(New language underlined. Existing language is codified in Business and Professions Code section 6067.)

To effectuate this change in the law, proposed new Rule of Court, rule 9.4 would provide as follows:

9.4 Oath required when admitted to practice law

In addition to the language required by Business and Professions Code section 6067, the oath to be taken by every person on admission to practice law is to conclude with the following: “As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity.”

(The proposed rule is also set forth in Attachment 2.) The courtesy and professionalism statement is intended to be an aspirational statement and not intended to define a professional conduct standard enforceable through State Bar discipline.¹

LENGTH OF PUBLIC COMMENT PERIOD:

State Bar Rule 1.10(A), in part, provides that proposals be circulated for a “forty-five day period, which can be shortened to a minimum of 30 days or extended to a maximum of 90 days, as designated by the board. The goal here is to have this item back for the board to consider at its October Annual Meeting. Thus, it is recommended that the public comment period here be a 30-day period that would conclude on October 4, 2013.

¹ The aspirational nature of this addition to the oath is intended to avoid enforcement issues involving freedom of speech and expression that exist within the jurisdiction of the 9th Circuit Court of Appeal. See e.g., *United States v. Wunsch* (9th Cir. 1996) 84 F.3d 1110; *Standing Committee on Discipline v. Yagman* (9th Cir. 1995) 55 F.3d 1430.

EFFECTIVE DATE OF PROPOSAL:

If the Board ultimately approves the proposed rule, the proposal would be submitted to the Supreme Court for action. If the Supreme Court approves the proposed rule, the rule change would become effective as prescribed by the Court's order.

FISCAL / PERSONNEL IMPACT:

None.

RULE AMENDMENTS:

This proposal does not adopt or amend any State Bar rule. Ultimate Board approval would effectuate a recommendation to the Supreme Court that a new Rule of Court, rule 9.4, be approved.

BOARD BOOK IMPACT:

None.

RECOMMENDATION:

State Bar staff requests that the Committee approve its recommendation that proposed new Rule of Court, rule 9.4, as attached as Attachment 2, be circulated for a 30-day public comment period.

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 authorizes staff to make available for public comment for a period concluding on October 4, 2013, the proposed new Rule of Court, rule 9.4, *Oath Required when Admitted to Practice Law* in the form attached; and it is

FURTHER RESOLVED that good cause exists to reduce the comment period to thirty (30) days; 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.