

AGENDA ITEM

October 112

Rule of Court 9.4, Oath Required on Admission to Practice, Proposed New Rule - Request for Adoption Following Public Comment

DATE: October 7, 2013

TO: Members, Board Committee on Operations
Members, Board of Trustees

FROM: Robert A. Hawley, Deputy CEO/Deputy Executive Director

SUBJECT: Rule of Court 9.4, Oath Required on Admission to Practice, Proposed New Rule - Request for Adoption Following Public Comment

EXECUTIVE SUMMARY

At its August 2013 meeting, the Board Committee on Operations approved the circulation of proposed new rule of court 9.4 for a 30-day period of public comment. If ultimately approved by the Supreme Court of California ("Supreme Court"), the new rule would append a dignity, courtesy and integrity statement to the oath required to be taken by persons who are certified for admission to practice law. The public comment period ended on October 4, 2013 and thirteen comment letters were received. With one exception, all of the comment letters support the concept of appending a new statement to the oath. The supportive comments also request that the words "civility" and/or "professionalism" be included in the new statement. Staff recommends that the Board of Trustees ("Board") approve the proposal, in the form circulated for public comment, for transmittal to the Supreme Court for final action. In addition, staff recommends that the transmittal state that the Board encourages the Supreme Court's consideration of the option to include the words "civility" and/or "professionalism," as suggested by public comment, but that the Board does not endorse or oppose those changes.

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:

Business and Professions Code section 6067 currently embodies the oath taken upon admission. It provides, in pertinent part, that: "[e]very person on his admission shall take an oath to support the Constitution of the United States and the Constitution of the State of California, faithfully to discharge the duties of an attorney at law to the best of his knowledge and ability." Taking this oath is a requirement for all persons certified by the Supreme Court to practice law.

The California State Organization - American Board of Trial Advocates ("CAL-ABOTA") has for some years urged attorney regulatory authorities in various states to amend their attorney oaths to add professionalism commitments. 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.

At its August 2013 meeting, the Board Committee on Operations approved circulation of proposed new rule of court 9.4 for a 30-day period of public comment. As circulated for public comment, the new rule would append the following statement to the existing oath: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity."

ISSUE:

Whether to approve proposed new rule of court 9.4, in the form circulated for public comment, for transmittal to the Supreme Court for final action. (Attachment 1 provides the full text of proposed new rule of court 9.4, as recommended for approval.)

PUBLIC COMMENT:

The 30-day period of public comment ended on October 4, 2013 and thirteen public comment letters have been received. (The full text of the comment letters are provided in Attachment 2.) With one exception, all of the comment letters support the concept of amending the existing oath. All of the supportive comment letters also request that the word "civility" be included in the new statement. Some comment letters specifically recommend a language change that would substitute "civility" for "courtesy" and "professionalism" for "dignity."

In a comment letter received from CAL-ABOTA, the following case is presented for including "civility" in the proposed oath:

As an organization, CAL-ABOTA and indeed ABOTA nationally supports the principles of "civility, integrity, and professionalism" in the practice of law. The statement, currently under consideration, "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy, and integrity" is good, but falls short. "Courtesy" refers only to good manners or politeness. "Civility" on the other hand, refers to the act of showing regard for others.

Attorneys typically speak about the requirement of "civility," which inherently includes courtesy. The State Bar President, Pat Kelly often references the need for civility. The American Inns of Court universally speak of the need for "civility" among lawyers in their interactions with each other, the courts, their clients and the public. Law schools are now including programs on "civility" in the curriculum. ABOTA leads the nation in providing seminars and materials, entitled, "Civility Matters."

It is respectfully requested that the word ["civility" be included either in place of or in addition to "courtesy." Our preference would be as follows: "As an officer of the court, I will strive to conduct myself at all times with civility, integrity, and professionalism." That is a clearer statement of our professional responsibility. Rest assured, however, that regardless of the language, CAL-ABOTA supports this proposal.

As indicated by the above comment, CAL-ABOTA prefers a formulation that deletes both "courtesy" and "dignity" and substitutes "civility" and "professionalism." However, the CAL-ABOTA comment also expressly states that "regardless of the language, CAL-ABOTA supports this proposal."

CAL-ABOTA's position is supported in eleven other comment letters received. Three of these eleven letters are from individual attorneys, one is from the ABOTA National Office, and the other seven are from local chapters of CAL-ABOTA. (The local chapters are the: California Coast Chapter; Orange County Chapter; Sacramento Valley Chapter; San Bernardino-Riverside Chapter; San Diego Chapter; San Francisco Chapter; and San Joaquin Valley Chapter.) The consensus reflected in the public comment is that there is no opposition to the proposed new statement and that there is a preference for including of the word "civility" as a possible enhancement.

The one comment that did not support the proposal is from attorney Damon Swank. While Mr. Swank states that the proposal is "well-intentioned," he appears to advocate for a completely different policy. Mr. Swank seems to suggest that the State Bar should consider an enforceable rule of conduct rather than an aspirational statement in the oath. As noted in the earlier agenda items on this matter, the proposed addition to the oath does not define a professional conduct standard. The aspirational nature of the proposal 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.

DISCUSSION:

Staff recommends that the oath language be approved in the form circulated for public comment. Staff does not endorse or oppose the inclusion of the words "civility" or "professionalism" and recommends that the transmittal to the Supreme Court encourage consideration of these options as possible enhancements.

Staff makes this recommendation because: (1) the public comments demonstrate broad support for the proposal; (2) the CAL-ABOTA comment clearly supports the proposal notwithstanding a stated preference for language changes; and (3) this is a proposal for a new Rule of Court where both the concept and the language issued for public comment has been the subject of meetings with Judicial Branch staff.

If staff's recommendation is accepted, then 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. [Inserted Text Begins] As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity. [Inserted Text Ends]

(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.”

As no change is made to the public comment version, this proposal can be submitted to the Supreme Court for action following Board approval. However, if the Board were to amend the language to include “civility” and/or “professionalism,” as preferred by CAL-ABOTA, then re-circulation for further public comment would be required as these amendments would constitute a material change to the proposal.

EFFECTIVE DATE OF PROPOSAL:

If the Board ultimately approves the proposed rule, the proposal would be submitted to the Supreme Court for consideration and final 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 known.

RULE AMENDMENTS:

This proposal does not adopt or amend any State Bar rule. 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:

It is recommended that proposed new rule of court 9.4 be approved for transmittal to the Supreme Court for final action and that the transmittal state that the Board encourages the Supreme Court to consider the language changes suggested by the public comment but that the Board does not endorse or oppose those possible amendments.

PROPOSED BOARD COMMITTEE RESOLUTION:

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

RESOLVED, that following a period of public comment and consideration of the public comment received, the Board Committee on Operations recommends that the Board approve the proposal for new rule of court 9.4 as set forth herein as Attachment 1, and direct staff to transmit the proposal to the Supreme Court for consideration and final action; and it is

FURTHER RESOLVED, that the transmittal to the Supreme Court state that the Board encourages the Supreme Court's consideration of the option to include the words "civility" or "professionalism," as suggested by the public comment, but that the Board does not endorse or oppose these changes.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Board of Trustees concur with the Committee on Operation's recommendation, the following resolution would be appropriate:

RESOLVED, that upon the recommendation of the Committee on Operations, the Board of Trustees hereby approves the proposal for new rule of court 9.4 as set forth herein as Attachment 1, and directs staff to transmit the proposal to the Supreme Court of California for consideration and final action; and it is

FURTHER RESOLVED, that the transmittal to the Supreme Court state that the Board encourages the Supreme Court's consideration of the option to include the words "civility" or "professionalism," as suggested by the public comment, but that the Board does not endorse or oppose these changes.

ATTACHMENTS:

- 1) Proposed new rule of court 9.4
- 2) Full text of public comment letters received on proposed new rule of court 9.4