

AGENDA ITEM

DATE: October 30, 2013

TO: Members, Regulation, Admissions and Discipline Oversight

FROM: Joann Remke, Presiding Judge, State Bar Court
Colin Wong, Chief Administrative Officer, State Bar Court

SUBJECT: Proposed Revisions to the Rules of Procedure of the State Bar of California – Request for Authority to Release for Public Comment

EXECUTIVE SUMMARY

The Rules of Procedure of the State Bar of California, which provide both procedural and substantive requirements for cases in the State Bar Court, were substantially revised in 2010. After working with the amended rules for over two years, the State Bar Court has determined that additional changes are needed to further clarify the process and to correct minor errors. With a few exceptions, most of the revisions are not intended to substantively change the procedures. Those with substantive changes are set forth in more detail below. The proposed amendments would be released for a 60-day public comment period.

BACKGROUND

In September 2010, the Board of Trustees approved for adoption the State Bar Court's proposed amendments to the Rules of Procedure of the State Bar of California ("Rules"), effective January 2011. In April 2013, the State Bar Court initiated a formal evaluation process to determine the efficacy of the amendments. Public comments were solicited and received regarding the effect of the amendments.

After performing our own evaluation and reviewing the public comments, we have determined that amendments to the Rules are warranted. The majority of these amendments seek to correct, clarify, or conform the Rules to current practices, but do not materially change the process. The few substantive revisions primarily address the default process and are set forth in more detail below.

ISSUE

Whether to authorize 60 days of public comment on the proposed revisions to the Rules of Procedure of the State Bar of California.

DISCUSSION

We believe the proposed amendments will further improve efficiency and public protection, without sacrificing members' due process rights in the disciplinary system. The majority of the modifications are non-substantive (see Attachment A). The more extensive changes relate primarily to the default process, as discussed below.

The current default rules were intended to eliminate the inefficiency of conducting multiple default proceedings against the same member. Previously, after a default was entered and allegations deemed admitted, a discipline recommendation was made based on the misconduct. While the member remained in default, a disbarment recommendation often occurred in a subsequent default proceeding as a result of the member's failure to comply with the discipline order issued in the first default proceeding. Recognizing that most members under these circumstances had essentially abandoned their law licenses, the current Rules place a defaulting member on inactive status pending a timely motion to set aside or vacate the default. A member has 180 days to move to set aside a default entered after he or she failed to file a response to the charges, and 90 days after the default is entered for failing to appear at trial. If the member fails to take action within these time periods, the State Bar will file a petition for disbarment. If the member has not successfully sought relief from the default, and all due process procedures have been followed, the judge will recommend the member's disbarment.

We believe that shortening the time periods to 90 and 45 days, respectively, would result in more efficient resolution of matters where members have failed to participate in the disciplinary process. A member will continue to have several opportunities to move to set aside or vacate the default and to participate in the proceeding, including after the default is entered, after a petition for disbarment is filed, and after a disbarment recommendation is made. More importantly, the hearing judge will retain discretion to grant a motion to set aside or vacate the default, or to take other appropriate action, including vacating the default subject to appropriate conditions or setting it aside for limited purposes only (e.g., hearing on level of discipline). The amendments clarify that the judge maintains discretion to order appropriate relief at all stages of the process.

In addition, the amendments seek to correct, clarify, or conform the Rules to current practices in the following areas:

- Method and timing of service in different proceedings;
- Mandatory early exchange of all discovery, including expert witnesses;
- Procedure and timing for involuntary inactive enrollment due to a member's substantial threat of harm to a client or the public; and,
- Eligibility and timing for participation in the Alternative Discipline Program.

FISCAL / PERSONNEL IMPACT:

None expected.

RULE AMENDMENTS:

See attached. Attachment A shows the proposed changes, and Attachment B shows a clean version of the proposed rules.

BOARD BOOK IMPACT:

None known.

RECOMMENDATION

It is recommended that the Board Committee authorize 60 days of public comment on the proposed amendments.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Regulation, Admissions and Discipline Oversight Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Regulation, Admissions and Discipline Oversight Committee authorizes staff to make available for 60 days of public comment the proposed amendments to the Rules of Procedure of the State Bar of California, in the form attached; 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.

ATTACHMENTS: **A** - Rules of Procedure of the State Bar of California with proposed modifications

B - Rules of Procedure of the State Bar of California as modified pursuant to proposal