

# AGENDA ITEM

**III B. November 14 2013**

**DATE:** November 14, 2013

**TO:** Members, Board Committee on Operations

**FROM:** Robert Hawley, Deputy Executive Director

**SUBJECT:** State Bar of California's Conflict of Interest Code for Designated Employees, Proposed Revisions – Request for Public Comment

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## EXECUTIVE SUMMARY

This requests the Board Committee on Operations to authorize a 30 day public comment period on proposed amendments to the State Bar's Conflict of Interest Code ("Code") for Designated Employees. The Political Reform Act, Government Code § 81000 et seq. ("PRA"), requires the State Bar, as a public agency, to adopt a Conflict of Interest Code (Code) for officers, employees and consultants, who, during the course of their work for the State Bar, make or participate in making decisions that may have a material impact on their financial interests (Designated Employees). The State Bar's Code includes a list of Designated Employee positions (Appendix A of the Code) that are subject to the Code and a list of Disclosure Categories (Appendix B of the Code) in which Designated Employees must disclose financial interests in compliance with the Code. Government Code § 87306 requires periodic revisions of the Code in order to assure that the list of Designated Employees and Disclosure Categories are accurate and to conform the Code to changes that may have occurred in the PRA or regulations of the California Fair Political Practices Commission ("FPPC").

In conformity with these requirements, the State Bar annually reviews its Conflict of Interest Code and circulates it for public comment in advance of its application for the upcoming year. Over the past year, the State Bar has engaged in a material review of the Conflict of Interest Code, making substantive changes to the required Disclosure Categories and Designated Employees.

The Disclosure Categories have been updated to reflect changes in the State Bar's operational functions since the Code was first adopted years ago. The changes are explained in the item that follows. The Designated Employees have also been expanded to require more reporting and disclosure than has historically been the case.

The 30 day public comment period will begin on November 16, 2013 and expire on December 15, 2013. This will allow the item to return to the Board's January 2014 meeting for approval, followed by implementation beginning in February 2014. The 2014 compliance period begins in March and April of each year.

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## **BACKGROUND**

The Political Reform Act requires state and local government agencies, such as the State Bar, to adopt and promulgate conflict of interest codes. The State Bar is also subject to the Conflict of Interest standards mandated by Business and Professions Code § 6035-6038. These sections conform to the definitions specified in Government Code § 87103.

Historically, the State Bar has reviewed its Conflict of Interest Code annually to update the list of Designated Employees subject to the reporting requirements under the Disclosure Categories. This year, the State Bar proposes material and substantive changes to the reporting categories, expanding the reporting requirements to a number of employees who previously had not be required to report under the act.

The PRA requires agencies to identify areas where persons who act on the agency's behalf must disqualify themselves from making decisions because of a financial conflict of interest. The PRA requires that agencies designate 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 reporting requirements on the list of Designated Employee positions. The disclosure categories, defined in the Code, indicate the subject matter areas in which the Designated Employees are authorized to make decisions and may be influenced by financial interests requiring disclosure under the Code.

The amended Disclosure Categories range from Category 1 to Category 14. This compares to preexisting Categories 1-20.

The Fair Political Practices Act and the State Bar's public comment rules (1.10-1.11 of the Rules of the State Bar) require that material changes to the Conflict of Interest Code be circulated for public comment. Public comment is required when material changes are made to the Code or Disclosure Categories, as is here the case. A 30 day public comment period is requested, expiring on December 15, 2013, will allow the amended Code to come back to the Board for approval at its January 2014 Board meeting. Implementation of the amendment would take place no later than February 2014, so that the Code can be distributed to employees by March 1, 2014, with a filing disclosure deadline of April 1, 2014.

## **ISSUE**

Should the proposed revised Disclosure Categories and Conflict of Interest Code be circulated for a 30 day public comment period?

## **CONCLUSION**

The proposed revised Disclosure Categories and Conflict of Interest Code should be circulated for public comment to be considered by the Board at the end of the public comment period, along with any received public comment.

## **DISCUSSION**

The goal of the review conducted of the Code and Disclosure Categories over the past year and of the amendments proposed here is to address the Disclosure Categories first formulated years ago to assure that they still align with the operational realities of the State Bar regarding decision making within the organization. It was concluded that the Disclosure Categories could be combined and realigned to better reflect operational realities. It was also determined that a new disclosure category should be adopted, reflected in new proposed Category 2. This category requires disclosure of financial sources that are subject to the regulatory, permit or licensing authority of the State Bar.

Generally, the Conflict of Interest Code focuses upon the decision making authority within the organization involving financial decisions. The vast majority of State Bar employees do not have the authority to influence decisions on procurement, contracting or other types of financial commitments. As a result, the vast majority of employees have been covered by preexisting Category 20. Category 20 is different from the other categories in that it does not require reporting financial interests in advance of a decision, but only if the employee is actually disqualified from making an actual decision by § 6036 of Business and Professions Code. The changes expand the advance reporting requirements by adding new Category 2.

The following is a review of the category amendments.

Category 1. This is the broadest category, requiring the broadest financial disclosures by those in the organization who have the authority to make the broadest range of decisions. This category has been clarified, but remains unchanged.

Category 2. This is a new category that reflects the State Bar's role as a regulatory agency. It requires anyone involved in effectuating the regulatory authority of the State Bar, as opposed to exercising the financial authority of the State Bar, to disclose financial interests that may potentially affect the exercise of regulatory authority. As a result of this category, attorneys in the Office of the Chief Trial Counsel for example, will be required to report financial interests that they have with members of the State Bar who are subject to our regulatory authority because it is conceivable that such a financial interest could affect a regulatory decision.

Category 3 combines preexisting Category 2, addressing vendors of typesetting, printing or duplication services or equipment has been combined with preexisting Category 10, vendors of office supplies, office equipment, office furniture or business maintenance supplies.

Category 4 combines preexisting Category 3, addressing credited and unaccredited law schools, admissions-related consultants, with preexisting Category 17, addressing providers of continuing legal education, legal publications and online legal research.

Category 5 combines preexisting Category 4, addressing vendors of meeting space, food services and entertainment with preexisting Category 11, addressing travel agencies, hotels, meeting planning services, airlines and related travel vendors.

Category 6 is unchanged preexisting Category 5, addressing insurance companies, insurance brokerage firms, carriers, holding companies, underwriters, brokers and related industry vendors.

Category 7 is unchanged preexisting Category 6, addressing banks and other financial institutions.

Category 8 combines preexisting Category 7, addressing vendors of computers, consulting and computer related businesses with preexisting Category 18, addressing providers of audio-visual production services.

Category 9 is unchanged preexisting Category 8, addressing employee benefit providers and administrators of employee benefits, personnel consulting services and employment agencies.

Category 10 is unchanged preexisting Category 15, addressing relationships with real estate brokerage firms, property management, construction, real property subleasing and related activities.

Category 11 is unchanged preexisting Category 16, addressing providers of treatment or services related to chemical dependency.

Category 12 is unchanged preexisting Category 19, addressing reporting public relations and/or media management consultants.

Category 13 is the new Category 20 that requires reporting of disclosures actually made under Business and Professions Code § 6036.

Category 14 is the new Category 30, that is a “catch all” category that can be determined by the Executive Director in consultation with the Board of Trustees.

The Conflict of Interest Code itself remains unchanged. The material changes are in the reporting categories noted above.

The biggest change is that with the addition of Category 2, regarding financial interests related to the regulatory of the State Bar, many employees in the State Bar Court, including judges, and in the Office of the Chief Trial Counsel, will need to report in advance, financial relationships that they have with individuals subject to our regulatory authority. This is not limited, however, to the disciplinary authority of the State Bar. It also includes the regulatory responsibility that the State Bar has over MCLE providers, lawyer referral services, and other activities that require State Bar certification.

Appendix A of the Code lists the Classifications of those individuals now required to report within the categories indicated. This has been realigned from the preexisting Appendix A to reflect the broadened reporting responsibilities that are being adopted here.

**FISCAL / PERSONNEL IMPACT:**

None.

**RULE AMENDMENTS:**

None.

**BOARD BOOK IMPACT:**

None.

**RECOMMENDATION**

It is recommended that the Board Committee on Operations authorize public comment on the amendments to the State Bar's Conflict of Interest Code, as set forth above.

**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 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 here; and it is

**FURTHER RESOLVED**, that this authorization for release for public comment is not, and shall not be construed as an endorsement of the proposed item.

Attachments:

Attachment 1 – Conflict of Interest Code

Attachment 2 – Appendix A of the Code

Attachment 3 – Appendix B of the Code