

AGENDA ITEM

SEPT 114 Sept 13 2014

DATE: August 29, 2014

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

FROM: Pam Wilson, Senior Director Office of Education

SUBJECT: Return from Public Comment- Rules of the State Bar, Title 3,
Division 2. Rules 3.50 and 3.52 (B)

EXECUTIVE SUMMARY

This item presents a proposed amendment to State Bar Rules, Title 3, Division 2, Rules 3.50 and 3.52 (B) to change the title of non-lawyer State Bar Section (“Section”) members from “associate” members to “affiliate” members and to clarify that affiliate Section members are not members of the State Bar. This change is recommended because in cases of Unauthorized Practice of Law (UPL), a non-lawyer’s use of the title of “associate” Section member may allow room for misrepresentation and mislead the public. At its July 2014 meeting, the Board Committee on Member Oversight authorized a 30 day public comment period on the proposed amendment.

Questions on this item should be directed to Pam Wilson at (415) 538-2395 or Pam.Wilson@calbar.ca.gov.

BACKGROUND

State Bar Rules 3.50 and 3.52(B) provide that, in addition to members of the State Bar, Sections may have “associate” members. UPL cases have involved non-lawyers stating that they are “associate” members of The State Bar of California. Since law firms actively use the title of “associate,” the similar sounding “associate” member is misleading to the public. We believe changing the name from “associate” member to “affiliate” member will clear up this potential confusion.

ISSUE

Whether to approve the proposed amendment to State Bar Rules 3.50 and 3.52 (B) in the form attached hereto as Attachment A, which changes the name of non-lawyer section members from “associate” members to “affiliate” members, and clarifies that this category of Section members are not members of the State Bar.

DISCUSSION

Non-lawyer members of the Sections are professionals representing a variety of industries. Some of the professions that are represented by non-lawyer Section members include:

- CPA's
- Paralegals
- Professors
- Real Estate Agents
- Members of the Legal Profession not authorized to practice law in CA

Currently, these individuals have been identified as “associate” members of the Sections. The proposed revision of the rules to rename “associate” members to “affiliate” members would serve to continue to identify them as active members of the Section, while clarifying their status as non-lawyers.

The State Bar Sections will recognize “affiliate” members as enrolled participants of the Sections and these members will benefit by receiving the same information and access to materials as lawyer-members. “Affiliate” members can also serve on Section Executive Committees, in a leadership capacity or on a committee within that Section. No more than one-fourth of all section members may be non-lawyers.

PUBLIC COMMENT

The proposed amendments to the State Bar Rules, Title 3, Division 2, Rules 3.50 and 3.52 (B) were published on the State Bar website for a 30 day public comment period ending August 22, 2014. One comment was received and is listed in its entirety here:

Attorney Perry Segal submitted a comment in favor of the proposal stating: “In short, I’m in favor of this proposed revision. The word, “Associate” may lead one to assume the person holding that title is an attorney.”

CONCLUSION

Should the Board of Trustees ultimately approve the amendment to the rules, it is anticipated the rule change would become effective November 10, 2014.

FISCAL / PERSONNEL IMPACT:

None

RULE AMENDMENTS:

Proposed amendment to the State Bar Rules 3.50 and 3.52 (B) in the form attached hereto as Attachment A.

BOARD BOOK IMPACT:

Tab 20, Article 1, Section 1 and Section 3(B)

RECOMMENDATION

Staff recommends that the Board Committee on Operations approve the proposed amendments to the Rules of the State Bar, Title 3, Division 2. Rules 3.50 and 3.52 (B), as attached as Attachment A.

PROPOSED BOARD COMMITTEE RESOLUTION:

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

RESOLVED, that the Board Committee on Operations recommends that the Board adopts the proposed revisions to the Rules of the State Bar, Title 3, Div. 2, Rules 3.50 and 3.52 (B), changing the title of non-lawyer State Bar Section members from “associate” members to “affiliate” members and to clarify that affiliate Section members are not members of the State Bar, in the form attached as Attachment A, effective on November 10, 2014.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board of Trustees concur with the Board Committee on Operations recommendation, the following resolutions would be in order:

RESOLVED, following publication for comment and consideration of the comments received, and upon recommendation of the Board Committee on Operations, that the Board of Trustees hereby adopts the proposed revisions to the Rules of the State Bar, Title 3, Div. 2, Rules 3.50 and 3.52 (B), changing the title of non-lawyer State Bar Section members from “associate” members to “affiliate” members and to clarify that affiliate Section members are not members of the State Bar, in the form attached as Attachment A, effective on November 10, 2014.

ATTACHMENT

A: Rules of the State Bar, Title 3, Division 2. Rules 3.50 and 3.52 (B)