

AGENDA ITEM

112 November 7, 2014

DATE: November 7, 2014

TO: Members, Board Executive Committee
Members, Board of Trustees

FROM: Robert A. Hawley, Deputy Executive Director

SUBJECT: Proposed Revisions to the Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service

EXECUTIVE SUMMARY

The Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service, were first adopted in 1989 to effectuate the statutory provisions mandating that the Board of Trustees delegate to the State Bar Court the authority to adjudicate professional disciplinary matters. [See Business and Professions Code Sections 6086.5, 6079.1]. These rules have not been updated since. The proposed amendments here reflect necessary updates and changes to the rules to bring them current. There is no substantive change to the benefits, terms and conditions intended. This is before the Board Executive Committee as that Committee oversees personnel administration. Public comment is not required for internal personnel standards such as these rules.

BACKGROUND

Business and Professions Code Section 6086.5 mandates that the Board of Trustees establish a State Bar Court and delegate to it the authority to determine professional discipline matters. Sections 6086.5 and 6079.1 provide for the appointment of State Bar Court Hearing and Review Department judges to 6 year terms and for judges to be paid a statutorily set amount. Section 6079.1(d) provides that the Board shall “fix and pay reasonable compensation and benefits” to the judges subject to the statutorily fixed annual salary. State Bar Court judges are not State Bar employees. They are appointees that are compensated through State Bar.

In accordance with the statutory authority, in 1989 the Board of Trustees approved the Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service (“State Bar Court Judge Rules.”) The rules recognize that State Bar Court judges are not State Bar employees

but are independent appointees who serve the disciplinary system in accordance with the statutory provisions. The rules conform to the statutory salary mandate of Business and Professions Code Sections 6086.5 and 6079.1 and otherwise adopt for the judges benefits of employment consist with those that govern State Bar Executive Staff, to the extent that the adjudicatory independence of the judges allow.

Since the rules were adopted in 1989, the non-attorney “lay” State Bar Court judge slot referenced in the rules has been eliminated; state Municipal Court judges, referenced in the rules as a bench mark for salary determination have been eliminated; State Bar holidays identified in the rules have been modified; transit and parking benefits referenced in the rules have changed. The revisions sought here seek to update the rules to address these changes. The amendments here are not intended to materially change the benefit structure adopted in 1989.

ISSUE

Should the amendments to the Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service be adopted as requested.

CONCLUSION

It is recommended that the amendments be adopted as proposed.

DISCUSSION

The proposed amendments (Attachment 1) are in legislative format which highlights the specific changes to the State Bar Court Judge Rules. The following is a summary of noteworthy changes:

1. The reference to a “lay” judge has been deleted [See, *O’Brien v. Jones* (2000) 23 Cal.4th 40].
2. The method for appointment to the State Bar Court has been expanded to include the appointments by the Governor, the Speaker of the Assembly and the Senate Committee on Rules [See, *O’Brien v. Jones* (2000) 23 Cal.4th 40].
3. The holiday schedule has been amended to conform and adapt to the current schedule which derives from the negotiated union Memoranda of Understanding and Executive Staff Rules.
4. Transit and parking benefits have been amended to conform and adapt to present practice in Los Angeles and San Francisco.
5. Other editorial changes have been made as noted in the attachment.

FISCAL / PERSONNEL IMPACT

None.

RULE AMENDMENTS

If approved, the item would amend the Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service.

BOARD BOOK IMPACT

None. Like the Executive Staff Rules, Confidential Employee Rules, and union Memoranda of Understanding, these rules are not subject to public comment and are not contained in the Board Policy Book.

RECOMMENDATION

It is recommended that the Board Committee and the Board of Trustees adopt the amendments to the Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service, effective January 1, 2015, in the form attached as Attachment 1.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Board Executive Committee agree with the above recommendation, the following resolution is appropriate:

RESOLVED, that the Board Executive Committee recommends that the Board of Trustees approve the proposed amendments to the Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service, as set forth in Attachment 1 to be effective January 1, 2015.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the Board Executive Committee's recommendation, the following resolution is in order:

RESOLVED, that upon the recommendation of the Board Executive Committee, the Board of Trustees hereby approves the proposed amendments to the Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service, as set forth in Attachment 1 to be effective January 1, 2015.