

AGENDA ITEM

702 JANUARY 2015

DATE: January 24, 2015

TO: Members, Board of Trustees

FROM: Robert A. Hawley, Acting and Deputy Executive Director

SUBJECT: State Bar of California's Conflict of Interest Code for Designated Employees, Proposed Revisions – Adoption After Return from 30-Day Public Comment

EXECUTIVE SUMMARY

This agenda item recommends adoption of amendments to the State Bar's Conflict of Interest Code ("Code") for Designated Employees, following public comment. 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 the interests defined in the code (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 interests in compliance with the Code. Government Code § 87306 requires periodic revisions of the Code 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. Last year, the State Bar engaged in a material revision of the Code, making substantive changes to the required Disclosure Categories and Designated Employees. The Disclosure Categories were updated to reflect changes in the State Bar's operational functions since the Code was first adopted years ago. The Designated Employees were also expanded to require more reporting and disclosure than has historically been the case.

The State Bar proposes here to amend its Conflict of Interest Code to conform to Regulation 18730 of the Fair Political Practices Commission (FPPC). The Designated Regulation 18730 replaces the customized code that has been used by the State Bar historically. This is not intended to be a material change in the substance of the Code, but rather to conform it to the substance and format recommended by the FPPC.

Additionally, Designated Employees (Appendix A) are updated to reflect current circumstances.

This was released for public comment following the Board's November 2014 meeting. The public comment period expires on January 19, 2015. Any comments received will be reported to the Board at its January meeting. To date, no comments have been received. Board action is necessary at the January 2015 meeting so that the amendments can be implemented by March 1, 2015.

BACKGROUND

This agenda item recommends adoption of amendments to The State Bar of California's Conflict of Interest Code for Designated Employees (Code). The Political Reform Act requires that state and local government agencies, such as the State Bar, 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.

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. Last year, the State Bar made material changes to the reporting categories, expanding the reporting requirements to a number of employees who previously had not been required to report under the act.

This year the State Bar is proposing that it adopt, in place of its customized code, the FPPC's Regulation 18730. The State Bar's customized code has always tracked the regulation, which provides an "evergreen" automatically updated code. The benefit of adopting the Regulation over a customized code is that the Regulation will update automatically with FPPC changes in the Regulation, not requiring the State Bar to track those changes independently and separately incorporate them into a customized code.

Additionally, the Designated Employees (Appendix A) have been updated to reflect current circumstances.

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 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. The proposed revisions were published for 30 days of public comment ending on January 19, 2015. To date, no comments have

been received. Any comments received at the time of Board action will be reported to the Board. Board action is necessary at the January 2015 meeting in that revisions must be implemented in February so that the Code can be distributed to designated employees by March 1, 2015. Their deadline for filing disclosure statements under the Code is April 1, 2015.

ISSUE

Whether to adopt the proposed amendments to the State Bar's Conflict of Interest Code for Designated Employees.

CONCLUSION

It is appropriate to update the Code by adopting the proposed amendments to the list of Designated Employee Positions of the State Bar's Conflict of Interest Code for Designated Employees and to the Conflict of Interest Code itself.

DISCUSSION

This year it is proposed that the State Bar adopt in place of its customized code the FPPC's Regulation 18730. The State Bar's customized code has always tracked the regulation which provides an "evergreen" automatically updated code. The benefit of adopting the Regulation over a customized code is that the Regulation will update automatically with FPPC changes in the Regulation, not requiring the State Bar to track those changes independently and separately incorporate them into a customized code.

Additionally, the Designated Employees (Appendix A) have been updated to reflect current circumstances.

FISCAL / PERSONNEL IMPACT

None.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

None.

RECOMMENDATION

It is recommended that the proposed revisions to the Conflict of Interest Code for Designated Employees be adopted.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the recommendation, the following resolution is in order:

RESOLVED, that following publication for comment and no comments having been received, the Board of Trustees of the State Bar of California hereby adopts the proposed revisions to the State Bar of California's Conflict of Interest Code for Designated Employees, in the form attached hereto and made a part hereof.

Attachments:

Attachment 1 – Proposed Code, Regulation 18730

Attachment 2 – Appendix A of the Code, Designated Employee Positions

Attachment 3 – Appendix B of the Code, Disclosure Categories