

AGENDA ITEM

DATE: April 23, 2015

TO: Members, Regulation and Discipline Committee
Members, Admissions and Education Committee

FROM: Gayle Murphy, Senior Director, Admissions
Colin Wong, Chief Administrative Officer, State Bar Court

SUBJECT: PROPOSED AMENDMENTS TO THE STATE BAR RULES RE
LEGAL SPECIALIZATION AND THE STATE BAR COURT
RULES OF PROCEDURE CONCERNING HANDLING OF
CERTIFICATION DENIALS – REQUEST TO CIRCULATE FOR
PUBLIC COMMENT

EXECUTIVE SUMMARY

When Title 3. Programs and Services, Division 2, Chapter 2. Legal Specialization, Rules of the State Bar of California (Rules) were revised last year, a portion of the Rules relating to appealing a denial of certification by the Board of Legal Specialization was eliminated to ensure consistency with State Bar Court procedures for handling appeals.

In discussion with other State Bar departments that would be involved in processing an appeal (Offices of General Counsel, Chief Trial Counsel and the State Bar Court), it has been determined that the Rules should be amended to provide clarification and guidance with regard to how denials and appeals should be handled. In addition, it was determined that language should be added to the State Bar Court Rules of Procedure that specifically addresses how legal specialization certification appeals are handled.

Proposed amendments have been drafted and it is recommended that the proposed amendments to the Rules and the State Bar Court Rules or Procedure be released for a 45-day public comment period.

BACKGROUND

The Rules were revised, effective January 1, 2014. As part of that process, many of the procedural rules were removed from the Rules with the intention to have them as guidelines or, in cases where they might conflict with other rules, follow the procedures and requirements already established in the primary governing rules, such as in the Rules of Procedure of the State Bar of California, MCLE rules, etc.

One of the procedures removed involved the appeals process for legal specialist certification denials, which, under the former Rules, were handled by the State Bar Court. The current State Bar Rules of Procedure do not have specific rules relating to appeals for legal specialist certification denials. State Bar Court decisions from the past provide little guidance upon which denials of legal specialist certification can be reversed. In the event there was a future decision

by the Board of Legal Specialization to deny certification, it is believed, at a minimum, there should be specific rules in the Rules of Procedure to follow.

DISCUSSION

In consultation with staff representatives from the Office of the Chief Trial Counsel, the State Bar Court and the Office of General Counsel, proposed amendments to the Rules and the Rules of Procedure have been drafted. In addition to clarifying the appeal procedures, other modifications to the Rules are being suggested that will make it clear under what conditions certification may be revoked/suspended, the right to a hearing before the California Board of Legal Specialization and other minor technical modifications.

FISCAL / PERSONNEL IMPACT

None expected.

RULE AMENDMENTS

Amendments to Title 3., Division 2, Chapter 2. Legal Specialization of the Rules and the State Bar Court Rules of Procedure.

BOARD BOOK IMPACT

None known.

BOARD COMMITTEE RECOMMENDATION

It is recommended that the Regulation and Discipline Committee authorize the release of the proposed amendments for a 45-day public comment period. If the Board Committee agrees, it is recommended that the Board Committee approve the following resolution:

RESOLVED, that the Regulation and Discipline Committee authorizes staff to release proposed amendments to the State Bar Court Rules of Procedure and to Title 3. Programs and Services, Division 2, Chapter 2. Legal Specialization of the State Bar Rules concerning the handling of certification denials for a 45-day public comment period; 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.

ATTACHMENT(S) LIST

Proposed Amendments to Legal Specialization Rules

Proposed Amendments to State Bar Court Rules of Procedure