

AGENDA ITEM

122 JULY 2015

DATE: July 8, 2015

TO: Members, Regulation and Discipline Committee
Members, Board of Trustees

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

SUBJECT: PROPOSED AMENDMENTS TO THE STATE BAR RULES RE: LEGAL SPECIALIZATION AND THE RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA CONCERNING HANDLING OF CERTIFICATION DENIALS—REQUEST FOR ADOPTION FOLLOWING 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.

In May, the Regulation and Discipline Committee authorized the release of the proposed amendments for a 45-day of public comment period. The public comment period ended on July 6, 2015. No comments were received.

It is recommended that the Regulation and Discipline Committee recommend to the Board of Trustees adoption of the proposed amendments to the Rules and the State Bar Court Rules of Procedure.

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 were drafted. In addition to clarifying the appeal procedures, other modifications to the Rules are being proposed 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.

With the approval of the Regulation and Discipline Committee, the proposed amendments and new rules were circulated for a 45-day public comment period, which ended on July 6, 2015. No comments were received.

There being no public comment that might affect the proposals, the original versions are being recommended for adoption.

FISCAL/PERSONNEL IMPACT

None expected.

RULE AMENDMENTS

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

EFFECTIVE DATE OF PROPOSAL

Immediate upon adoption.

BOARD BOOK IMPACT

None known.

BOARD COMMITTEE RECOMMENDATIONS

If the Regulation and Discipline Committee agrees that the proposed amendments to the Legal Specialization Rules and State Bar Court Rules of Procedure attached hereto as Attachment A and Attachment B, should be adopted, effective upon adoption, it should recommend that the Board of Trustees approve the following resolution:

RESOLVED, following publication for comment and notice that no comments were received, and upon recommendation of the Regulation and Discipline Committee, the Board of Trustees adopts the proposed amendments to the Legal Specialization Rules, Title 3, Division 2, Chapter 2 and State Bar Court Rules of Procedure, attached hereto as Attachment A and Attachment B, effective upon adoption.

ATTACHMENT(S) LIST

- A.** Proposed Amendments to Legal Specialization Rules
- B.** Proposed Amendments to State Bar Court Rules of Procedure.