

AGENDA ITEM

ITEM III.B.

DATE: February 23, 2016

TO: Members, Admissions and Education Committee

FROM: Gayle Murphy, Senior Director, Admissions

SUBJECT: Proposed Amendments to Admissions Rules re Open/Closed Meetings of the Committee of Bar Examiners - Request for Release for Public Comment

EXECUTIVE SUMMARY

Effective January 1, 2016, the State Bar of California became subject to the California Public Records Act and beginning April 1, 2016, the State Bar will be subject to the Bagley-Keene Open Meeting Act. The new laws supersede the Board of Trustees' (Board) Open/Closed Meeting Rules and the Board has adopted implementing rules to conform its meetings and the meetings of most other State Bar committees and boards to the new law. Because the Committee of Bar Examiners' (CBE) meetings are exempted from the requirements of the Bagley-Keene Open Meeting Act, and in recognition of the new provisions in the law concerning the confidentiality of certain information maintained by the CBE, the CBE adopted in principle, subject to a period of public comment and approval of the Board, open/closed meeting rules concerning its own meetings. The proposed amendments are in the form of a new Rule 4.11, Title 4, Division 1 of the Rules of the State Bar of California (*Admissions Rules*). The language uses much, but not all, of the language from the Board's former Open/Closed Meeting Rules. The CBE requests authorization from the Admissions and Education Committee to circulate proposed Rule 4.11 for a 30-day public comment period, followed by review of any comments received and final consideration by the Committee and approval by the Board of Trustees.

BACKGROUND

Effective January 1, 2016, the State Bar of California became subject to the California Public Records Act and beginning April 1, 2016, the State Bar will be subject to the Bagley-Keene Open Meeting Act. Pertinent parts relative to the Committee of Bar Examiners (CBE) follow:

Effective January 1, 2016

§ 6026.11. Conformance with California Public Records Act.

The State Bar is subject to the California Public Records Act ... and all public records and writings of the State Bar are subject to the California Public Records Act.

§ 6060.25. Confidentiality of information provided by applicant to the State Bar for admission and license to practice law.

Notwithstanding any other law, any identifying information submitted by an applicant to the State Bar for admission and a license to practice law and all State Bar admission records, including, but not limited to, bar examination scores, law school grade point average (GPA), undergraduate GPA, Law School Admission Test scores, race or ethnicity, and any information contained within the State Bar Admissions database or any file or other data created by the State Bar with information submitted by the applicant that may identify an individual applicant, shall be confidential and shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Chapter 3.5 (commencing with [Section 6250](#)) of Division 7 of Title 1 of the Government Code).

Effective April 1, 2016

§ 6026.7. Open meeting requirements; conformance with Bagley-Keene Open Meeting Act.

(a) The State Bar is subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) and all meetings of the State Bar are subject to the Bagley-Keene Open Meeting Act.

(b) Notwithstanding any other law, the Bagley-Keene Open Meeting Act shall not apply to the Judicial Nominees Evaluation Commission or the Committee of Bar Examiners.

(c) This provision shall become operative on April 1, 2016.

The new laws supersede the Board's Open/Closed Meeting Rules and the Board has adopted implementing rules to conform its meeting and the meeting of most other State Bar committees and boards to the new law. Because the CBE's meetings are exempt from the Bagley-Keene Open Meeting Act, and in recognition of the new provisions in the law concerning the confidentiality of certain information maintained by the CBE, the CBE adopted in principle, subject to a period of public comment and approval of the Board, open/closed meeting rules concerning its own meetings.

DISCUSSION

Title 6, Division 2, Chapter 2 of the *Rules of the State Bar of California* contained the requirements concerning meetings of State Bar committees. The CBE conducted its meetings in accordance with those rules and it would be appropriate to incorporate the relevant portions of those rules into the *Admissions Rules*.

Attached are the proposed amendments in the form of a new Rule 4.11 of the *Admissions Rules*, which incorporates much, but not all, of the language from the Chapter 2 discussed above and includes some new provisions.

The new rule specifies that the following matters will be discussed during the CBE's closed sessions:

- (1) pending or prospective litigation;

- (2) matters designated confidential by the CBE's charge, the State Bar Rules, or otherwise by law;
- (3) matters related to the moral character, competence, or physical or mental health of an individual;
- (4) allegations of criminal or professional misconduct;
- (5) applications, petitions, requests, investigations, opinions, complaints, recommendations, or reports regarding matters delegated to the CBE by law or the Board;
- (6) proposals, negotiations, or discussions related to contractual, labor, business, or legislative matters;
- (7) matters related to the development, administration, or grading of an examination;
- (8) matters related to laws school regulated by the CBE that involve individual students or information related to a law school's operations that is not generally known or reasonably ascertainable by others, and by which another law school or others could obtain an advantage over the law school; and
- (9) matters relating to internal management of the CBE.

The CBE adopted in principle the new rule and seeks the Board Committee on Admissions and Education's authorization to circulate the proposed amendments for an abbreviated public comment period prior to final consideration by the CBE and recommendation to the Board Committee and Board of Trustees.

FISCAL/PERSONNEL IMPACT

None.

RULE AMENDMENTS

A new Rule 4.11 would be added to the *Admissions Rules*, if the proposed amendments are adopted by the Board following public comment.

BOARD BOOK IMPACT

None.

BOARD COMMITTEE RECOMMENDATION

It is recommended that the Admissions and Education Committee authorize the release of the proposed amendments for a 30-day public comment period. If the Board Committee agrees, it is recommended that the Admissions and Education Committee approve the following resolution:

RESOLVED, that the Admissions and Education Committee authorizes staff to release proposed amendments to the *Admissions Rules* in the form of a new

Rule 4.11, which establishes the rules for Open/Closed meetings of the Committee of Bar Examiners, for a 30-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.