

AGENDA ITEM

134 MAY 2016

DATE: May 2, 2016

TO: Members, Admissions and Education Committee
Members, Board of Trustees

FROM: Gayle Murphy, Senior Director, Admissions

SUBJECT: Proposed Amendments to Admissions Rules re Open/Closed Meetings of the Committee of Bar Examiners – Return From 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 became subject to the Bagley-Keene Open Meeting Act. The new laws superseded the Board of Trustees' (Board) Open/Closed Meeting Rules and the Board adopted implementing rules to conform its meetings and the meetings of most other State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. With the authorization of the Board of Trustees' Committee on Admissions and Education, the proposed amendments to Admissions Rules re Open/Closed Meetings of the CBE were circulated for a period of public comment. One comment was received. After review of the comment received, the CBE adopted the proposed new rule in the form that it was circulated for public comment, subject to the approval of the Board of Trustees. The CBE seeks approval of the new rule.

BACKGROUND

Effective April 1, 2016, the State Bar became subject to the Bagley-Keene Open Meeting Act. Pertinent parts relative to the CBE follow:

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The new law superseded the Board of Trustees' Open/Closed Meeting Rules and it adopted implementing rules to conform its and most other State Bar Committees and Boards meetings to the new law. Title 6, Division 2, Chapter 2 of the Rules of the State Bar of California formerly contained the requirements concerning meetings of State Bar Committees. The CBE conducted its meetings in accordance with those rules and it agreed that it would be appropriate to incorporate the relevant portions of those rules into the *Admissions Rules*.

Because the CBE is exempted from the Bagley-Keene Open Meeting Act, and in recognition of other new provisions in the law concerning the confidentiality of certain information maintained by the CBE, the CBE approved in principle the attached proposed amendments in the form of a new Rule 4.11 of the *Admissions Rules*, subject to a 30-day public comment period that was approved by the Board of Trustees' Committee on Admissions and Education.

DISCUSSION

The proposed new rule was posted on the State Bar's website under the Public Comment headline; the deadline for submitting comments was April 20, 2016. One comment was received.

The comment was submitted by State Bar member Michael J. McDermott. Mr. McDermott opposes the proposed rule and writes: "...to Oppose Codifying Secret Star Chamber Scams as future standard procedure for the Bar Thought Police." He bases his position on his experiences with the moral character determination process and other factors related to his law school study at McGeorge School of Law. He opposes "almost All secrecy in the Process...." Copies of the public comment are available upon request.

The CBE considered the public comment and took action adopting the proposed new rule in the form circulated for public comment (Attachment A), subject to the approval of the Board of Trustees.

FISCAL/PERSONNEL IMPACT

None.

RULE AMENDMENTS

A new Rule 4.11

BOARD BOOK IMPACT

None.

BOARD COMMITTEE RECOMMENDATIONS

If the Admissions and Education Committee agrees with the CBE's recommendation to approve the proposed amendments to the *Admissions Rules* in the form of a new Rule 4.11, it should recommend that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approves the amendments to a new Rule 4.11 of the *Admissions Rules*, attached hereto, effective immediately.