

AGENDA ITEM

DATE: July 13, 2016

TO: Members, Regulation and Discipline Committee

FROM: Vanessa Holton, General Counsel
Robert G. Retana, Deputy General Counsel

SUBJECT: Request for Authorization to Circulate for Public Comment Proposed Amendment to Rule 2302 of the Rules of Procedure of the State Bar of California

EXECUTIVE SUMMARY

This item requests that the Regulation and Discipline Committee circulate, for a 45-day public comment period, a proposed amendment to State Bar Rule of Procedure 2302.

BACKGROUND

The current version of State Bar Rule of Procedure 2302 is inconsistent with the applicable sections of the Business and Professions Code which pertain to confidentiality of State Bar records. As currently drafted, the rule could be construed to require the State Bar to treat non-attorney complaints or investigations as confidential. The rule references non-members in several places which could be construed to require the Chief Trial Counsel to conduct a balancing test before waiving confidentiality with respect to complaints or investigations against non-members. However, this implies that there is a duty of confidentiality with respect to non-members.

Revision of the rule is suggested to eliminate certain references to non-members in subsections (d)(1)(A), (d)(1)(B), (d)(1)(C) and (d)(4), and to add language that clarifies that the State Bar has no duty of confidentiality with respect to complaints or investigations related to non-members, but may assert confidentiality when necessary to protect members of the public.

FISCAL/PERSONNEL IMPACT

None.

RULE AMENDMENTS

Rules of Procedure of the State Bar of California, Title III, Division I, Chapter 3

BOARD BOOK IMPACT

None

BOARD COMMITTEE RECOMMENDATION

OGC recommends that the Regulation and Discipline Committee authorize staff to circulate for a 45-day period of public comment, the proposed amendments to Rule 2302, Rules of Procedure of the State Bar of California, as set forth in Attachments A, B, and C.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Regulation and Discipline Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Regulation and Discipline Committee authorizes staff to make available for a public comment period of 45 days the proposed amendment to Rule 2302, in the form attached; and it is

FURTHER RESOLVED that this authorization for release for public comment is not and shall not be construed as a statement of recommendation of approval of the proposed item.

ATTACHMENTS

- A.** Current version of Rule 2302
- B.** Redline Version of Revised Rule 2302
- C.** Clean Version of Revised Rule 2302