

# **AGENDA ITEM**

**132 MAY 2017**

**DATE:** May 3, 2017

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

**FROM:** Saul Bercovitch, Office of General Counsel

**SUBJECT:** Consistency Project –  
Proposed adoption of amendments to the State Bar rules regarding law corporations

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## **EXECUTIVE SUMMARY**

The Office of General Counsel has reviewed all State Bar Rules to determine whether there are any material inconsistencies with the related statutes and Rules of Court. As part of that effort, on March 9, 2017, the Admissions and Education Committee authorized staff to release for a 45-day public comment period proposed amendments to the State Bar rules regarding law corporations. The State Bar received no comments. This Agenda Item recommends adoption of the proposed amendments, as released for public comment.

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## **DISCUSSION**

A law corporation is “a corporation which is registered with the State Bar of California and has a currently effective certificate of registration from the State Bar...Subject to all applicable statutes, rules and regulations, such law corporation is entitled to practice law.” (Bus. & Prof. Code, § 6160.) This Agenda Item proposes adoption of amendments to two State Bar Rules. The first covers the consequences resulting from a law corporation’s failure to submit a complete Annual Renewal and fee, and the second covers termination of a law corporation’s registration.<sup>1</sup>

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<sup>1</sup> Business and Professions Code section 6171, which governs law corporations, provides, in part: “With the approval of the Supreme Court, the State Bar may formulate and enforce rules and regulations to carry out the purposes and objectives of this article. . .” The proposed amendments to these State Bar Rules would therefore need to be approved by the Supreme Court, following adoption by the Board of Trustees.

1. Failure to submit a complete annual renewal and fee

Business and Professions Code section 6161.1 provides:

Each law corporation shall renew its certificate of registration annually at a time to be fixed by the State Bar and shall pay a fee therefor which shall be fixed by the State Bar in accordance with subdivision (a) of Section 6163.

Business and Professions Code section 6163(b) provides:

The certificate of registration of any law corporation failing to file the annual report, renew its certificate, and pay the fee therefor and any penalty due thereon for late filing, shall be suspended 60 days following written notice of delinquency. The written notice shall be mailed to the corporation at its current office or other address for State Bar purposes, as shown on the law corporation records of the State Bar. The suspension shall be ordered by the chief executive officer of the State Bar or his or her designee.

Title 3, Division 2, Chapter 3, Rule 3.156(B) provides:

A law corporation that fails to submit a complete Annual Renewal and fee is suspended and is not entitled to practice law. It may be reinstated upon submission within one year of the renewal fee, and any penalty. If the suspension lasts more than one year, the registration of the law corporation is involuntarily terminated.

Inconsistency

Rule 3.156(B) is inconsistent with Business and Professions Code section 6163(b) because the rule does not contain the limitation that a certificate of registration of a law corporation shall be suspended 60 days following written notice of delinquency.

Recommendation

As proposed to be amended, Rule 3.156 would provide:

Rule 3.156 - Annual renewal

- (A) A law corporation must annually renew its authorization to practice law by submitting an Annual Renewal with the fee set forth in the Schedule of Charges and Deadlines. The form must report any changes to the information last provided to the State Bar in an Annual Renewal, a special report, or a Law Corporation Guarantee. If the information required for the guarantee has changed, the renewal must also include a current guarantee executed by all shareholders. The deadline for submission of the Annual Renewal and the amount of the fee are set forth in the Schedule of Charges and Deadlines.

- (B) A law corporation that fails to submit a complete Annual Renewal and fee ~~is will be~~ suspended sixty days following written notice of delinquency and ~~is not will not be~~ entitled to practice law. It may be reinstated upon submission within one year of the renewal fee, and any penalty. If the suspension lasts more than one year, the registration of the law corporation is involuntarily terminated.
- (C) This rule does not apply to a qualified legal services project or qualified support center incorporated as a nonprofit public benefit corporation.

#### Explanation of proposed amendment

As an operational matter, the State Bar currently provides the 60-day notice before a law corporation is suspended for failure to submit an Annual Renewal and fee, as required by the statute, even though the language is not contained in the rule. Rule 3.156(B) should, however, be amended to add language explicitly providing for 60 days following written notice of delinquency.<sup>2</sup>

#### 2. Termination of a law corporation's registration

Business and Professions Code section 6169 provides:

(a) When there is reason to believe that a law corporation has violated or is about to violate any of the provisions of this article or the Professional Corporation Act or of any other pertinent statute, rule, or regulation, the State Bar may issue a notice directing the corporation to show cause why it should not be ordered to cease and desist from specified acts or conduct or its certificate of registration should not be suspended or revoked. A copy of the notice shall be served upon the corporation in the manner provided for service of summons upon a California corporation.

(b) A hearing upon the notice to show cause shall be held before a standing or special committee appointed by the board of trustees. Upon the hearing, the State Bar and the corporation shall be entitled to the issue of subpoenas, to be represented by counsel, to present evidence, and examine and cross-examine witnesses.

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<sup>2</sup> Amended Rule 3.156(B) would maintain the existing language providing for termination of a law corporation's registration if the suspension for failure to submit an Annual Renewal and fee lasts more than one year. The most common compliance problem for registered law corporations is failure to submit an annual report. The predecessor to current Rule 3.156 authorized suspension but did not spell out further consequences for failure to submit an annual report. When Rule 3.156(B) was adopted in 2010, it added language precluding indefinite failure to comply with the annual report requirement, with involuntary termination resulting after one year. An involuntarily terminated law corporation can file a new application for registration, rather than submit multiple years of past delinquent renewals.

(c) The hearing committee shall make findings in writing and shall either recommend that the proceeding be dismissed or that a cease and desist order be issued or that the certificate of registration of the corporation be suspended or revoked. The determination may be reviewed by the board of trustees or by a committee authorized by the Board of Trustees to act in its stead, upon written petition for review, filed with the State Bar by the corporation or the State Bar within 20 days after service of the findings and recommendation. Upon review, the board of trustees or the committee may take additional evidence, may adopt new or amended findings, and make such order as may be just, as to the notice to show cause.

(d) Subdivisions (a), (b), and (c) shall not apply to the suspension or revocation of the certificate of registration of a corporation in either of the following cases:

(1) The death of a sole shareholder, as provided in Section 6171.1.

(2) Failure to file the annual report and renew the certificate of registration, as provided in Sections 6161.1 and 6163.

Title 3, Division 2, Chapter 3, Rule 3.160 provides:

- (A) A law corporation that fails to submit a complete Annual Renewal and fee is suspended and is not entitled to practice law.
- (B) The State Bar may terminate the certification of a law corporation for failure to comply with these rules or applicable law. Termination is effective sixty days after it has issued a notice to the law corporation stating the grounds for the termination. The law corporation may request Supreme Court review of the termination.

#### Inconsistency

Business and Professions Code section 6169 provides for revocation of a law corporation's certificate of registration following notice and a hearing. Rule 3.160 provides for termination (the same as revocation) sixty days after notice, but does not reference a hearing.

## Recommendation

As proposed to be amended, Rule 3.160 would provide:

### Rule 3.160 - Involuntary termination of registration

(A) ~~—A law corporation that fails to submit a complete Annual Renewal and fee is suspended and is not entitled to practice.~~

(B-A) The State Bar may terminate the certification of a law corporation for failure to comply with these rules or applicable law. ~~Termination is effective sixty days after it has issued a~~ after providing notice to the law corporation stating the grounds for the termination and an opportunity for a hearing. The notice will provide a warning that termination will be effective sixty days after the notice is provided if the law corporation fails to respond. If the law corporation fails to respond, termination is effective sixty days after the State Bar has provided notice under this rule. The law corporation may request Supreme Court review of ~~the a~~ termination.

(B) This rule does not apply to termination resulting from

(1) the death of a sole shareholder; or

(2) failure to submit a complete Annual Renewal and fee

## Explanation of proposed amendments

### Current subdivision (A)

Existing Rule 3.160(A) covers suspension for failure to submit a complete Annual Renewal and fee, duplicating part of Rule 3.156(B). Existing Rule 3.160(A) would be deleted entirely, as this issue is fully covered by Rule 3.156(B).

### New subdivision (A)

Rule 3.160(A) would explicitly provide for notice and an opportunity for a hearing before the State Bar terminates the certification of a law corporation. Other operational details regarding the termination process would remain in the statute, as they are today.<sup>3</sup>

<sup>3</sup> Under State Bar Rule 3.150(B), the law corporation rules “do not reiterate or supersede the State Bar Act, statutory requirements for law corporations, or any other legal requirement.” The current State Bar Rules are the product of a major rules revision project that began in 2005. One goal of that project was to streamline the rules. The changes were not intended to be substantive. The predecessor rules paraphrased the statutory requirements, but the revised rules simply cite to the statutes in footnotes. Under State Bar Rule 1.20(K) “[i]f a rule cites the authority for the rule, the citation is part of the rule.” Rule 3.160 currently cites Business and Professions Code section 6169 as authority, and the proposed amendment to the rule would keep that in place. The combined effect of the statute and amended rule would be the same as it is today.

The amended rule would keep the sixty day notice period in place, and include termination if the law corporation fails to respond to the notice, thereby specifying that notice does not result in an open-ended process.

#### New subdivision (B)

The language of Rule 3.160(B) would correspond to the language of Business and Professions Code section 6169(d). Death of a sole shareholder is the most common reason for terminating a law corporation's registration, and involves an administrative issue with no need for a hearing. Rule 3.156 covers termination for failure to submit a complete Annual Renewal and fee, so Rule 3.160 would not apply to that situation.

#### 3. Public comments received on the proposed amendments

The proposed amendments to the State Bar rules regarding law corporations were released for a 45-day public comment period. The State Bar received no comments on the proposed amendments.

#### **FISCAL/PERSONNEL IMPACT**

None

#### **RULE AMENDMENTS**

Title 3, Division 2, Chapter 3, Rule 3.156  
Title 3, Division 2, Chapter 3, Rule 3.160

#### **BOARD BOOK IMPACT**

None.

#### **BOARD COMMITTEE RECOMMENDATIONS**

It is recommended that the Admissions and Education Committee recommend that the Board of Trustees adopt amended State Bar rules regarding law corporations, as released for public comment and as contained in Attachment A hereto. If the Admissions and Education Committee agrees, the following resolution is recommended:

**RESOLVED**, that the Board of Trustees, following the release for public comment and receiving no public comments in response, hereby adopts amended State Bar Rules regarding law corporations, as contained in Attachment A hereto.

#### **ATTACHMENT LIST**

- A. Amended State Bar rules regarding law corporations.