



The State Bar of California

OPEN SESSION AGENDA ITEM MAY 2024 AUDIT COMMITTEE IV.E

DATE: May 10, 2024

TO: Members, Audit Committee

FROM: Elizabeth Nolan, Lead Program Analyst, Office of Compliance

SUBJECT: Update on Rule 2201 and Form 700 Compliance Efforts

EXECUTIVE SUMMARY

This informational agenda item provides an update about efforts the State Bar has undertaken to monitor and enforce organizational compliance with requirements for timely, complete conflict of interest disclosures. At the State Bar, in addition to Statements of Economic Interest (Form 700s), required disclosures include those prescribed by Rule 2201 of the State Bar Rules of Procedure.

BACKGROUND

In 2023, the State Bar identified a need to clarify, formalize, and document responsibilities related to monitoring conflict of interest disclosure compliance. The Office of Chief Trial Counsel (OCTC) and the special deputy trial counsel (SDTC) issued policy directives in 2022 and 2023 to update and improve their respective conflict of interest procedures; this agenda item describes work to advance monitoring, reporting, and data management related to conflicts of interest disclosures.

Per the Fair Political Practices Commission (FPPC), "Government Code Section 1090 prohibits an officer, employee, or agency from participating in making government contracts in which the official or employee within the agency has a financial interest. Section 1090 applies to virtually all state and local officers, employees, and multimember bodies, whether elected or appointed, at both the state and local level." Further, FPPC states, "Under the [Political Reform] Act, a public official has a disqualifying conflict of interest in a governmental decision if it is foreseeable that the decision will have a financial impact on his or her personal finances or other financial interests. In such cases, there is a risk of biased decision-making that could

sacrifice the public's interest in favor of the official's private financial interests. To avoid actual bias or the appearance of possible improprieties, the public official is prohibited from participating in the decision." This prohibition on participating in decision-making where there is a financial conflict of interest appears also appears in the State Bar Act at Business and Professions Code section 6036(a). To adhere to the Political Reform Act, individuals designated in either the State Bar Conflict of Interest Code for Designated Employees or the State Bar Conflict of Interest Code for the Board of Trustees must file a Statement of Economic Interest (Form 700) upon assuming office, leaving office, and annually.

Rule 2201 of the State Bar Rules of Procedure provides that the chief trial counsel must recuse OCTC when an inquiry or complaint received by OCTC is about an employee, member of the Board of Trustees, or an attorney who within the past year had a relationship to the chief trial counsel, or where the circumstances of the complaint render it unlikely that the attorney will receive fair treatment or that the public will not be protected. Rule 2201 further provides that the chief trial counsel may recuse OCTC where a complaint involves: a member of any subentity; an attorney who within the past year had a relationship to the State Bar, a member of the Board of Trustees, or an employee other than the chief trial counsel; or where necessary to avoid the appearance that an attorney will not receive fair treatment or that the public will not be protected.

DISCUSSION

This section highlights recent efforts related to rule 2201 and Form 700 to enhance monitoring, reporting, and data management related to conflicts of interest disclosures.

STATE BAR RULE OF PROCEDURE RULE 2201

To accurately assess the need for to create firewalls or to recuse OCTC, the State Bar maintains a rule 2201 conflict of interest (COI) database. Organizational compliance with rule 2201 encompasses two main aspects: ensuring designated individuals are added to the rule 2201 database, and ensuring designated individuals timely complete a rule 2201 questionnaire.

The State Bar has performed the following tasks in support of compliance efforts:

- OGC issued a memo in February 2024 clarifying the classifications of individuals required to (1) be entered into the COI database and (2) complete a questionnaire disclosing relationships with California-licensed attorneys. As a result, additional State Bar attorney contractors¹ were contacted by State Bar staff in order to complete rule 2201 questionnaires.
- Procurement added fields in the State Bar's Oracle system to allow staff to flag, at the purchase requisition stage, whether the contractors will be required to complete a rule 2201 questionnaire upon contract execution.
 - Generally, the following consultants/contractors must disclose certain personal, financial, and/or professional relationships with California licensed attorneys.
 - SDTC attorneys and the administrator, who enter into contracts to

¹ Per existing policy, special deputy trial counsel attorneys complete rule 2201 questionnaires upon contract execution.

- conduct work on attorney complaints where OCTC has a conflict;
 - External closed case auditors, who are contracted attorneys that perform regular audits of case files closed by OCTC and SDTC; and
 - Outside counsel and retained experts who are California-licensed attorneys.
- Board and Committee Support, in coordination with OGC, conducted a training in March 2024 for subentity members that covered conflict of interest reporting under rule 2201.
- The Office of Compliance issued a policy related to entering, managing, and reporting data on rule 2201 conflicts.
- The Office of Compliance adopted a schedule for publicly reporting updated compliance statistics on the [State Bar's Transparency & Accountability webpage](#).

As of April 30, 2024, the overall completion rate for disclosures under rule 2201 across State Bar staff, Board of Trustees members, subentity members, and designated contractors is 95 percent. Moving forward, questionnaire completion will be due for all designated individuals annually in December.

FORM 700, STATEMENT OF ECONOMIC INTERESTS

Form 700 filing data is managed through NetFile, an external application.

Offices have done the following in support of compliance efforts:

- OGC is finalizing a Form 700 process manual that clarifies responsibilities of Filing Officers, and sets forth procedures and answers key questions about Form 700 processes including review of the conflict of interest codes' designated positions and disclosure categories, notification of filers, filing, audit of completed Form 700s, notification of late filers, and referral of noncompliant filers to the FPPC.
- OGC, in coordination with Human Resources, conducted Form 700 trainings for State Bar staff, and the FPPC conducted a training for Board of Trustees members, prior to the April 2 filing deadline.
- Procurement added additional flags in the State Bar's Oracle system to identify, at the purchase requisition stage, individual consultants/contractors who must complete a Form 700 upon contract execution.
 - Generally, two groups of contractors must complete Form 700 upon assuming office, leaving office, and annually:²
 - SDTC attorneys and the administrator, who enter into contracts to conduct work on attorney complaints where OCTC has a conflict; and
 - External closed case auditors, who are contracted attorneys that perform regular audits of case files closed by OCTC and SDTC.
- The Office of Compliance has adopted a schedule for publicly reporting updated Form 700 completion statistics on the [State Bar's Transparency & Accountability webpage](#).

² For the purpose of contractors/consultants, "assuming office" is defined as the effective date of the contract. Other contractors may need to complete a Form 700 if designated by the executive director, and/or so deemed by the consultant's or contractor's contract with the State Bar. See the State Bar Conflict of Interest Code for Designated Employees, disclosure category 14, for additional information.

As of April 30, 2024, the overall completion rate—which includes designated employees and subentity members defined in the State Bar Conflict of Interest Code for Designated Employees, as well as Board of Trustees members, covered under the State Bar Conflict of Interest Code for Board of Trustees—for annual statements due in 2024 is 99 percent. The overall timely filing rate is 98 percent.

The processes and procedures formalized in 2024 are intended to minimize duplication of work across offices, document clear roles and responsibilities, and decrease the likelihood that actual or potential conflicts of interest go unreported at the State Bar.

FISCAL/PERSONNEL IMPACT

There is a moderate but necessary personnel impact associated with improved monitoring of conflict of interest disclosure compliance, as well as increased outreach to filers, to ensure filings are completed in a timely manner.

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

Goal 4. Protect the Public by Engaging Partners

- a. 1. Increase access to State Bar data and performance outcomes.

RECOMMENDATIONS

None

ATTACHMENT LIST

None