



The State Bar of California

OPEN SESSION AGENDA ITEM 4.2 JULY 2024 BOARD OF TRUSTEES

DATE: July 18, 2024

TO: Members, Board of Trustees
Sitting as the Regulation and Discipline Committee

FROM: Steven Moawad, Special Counsel, Regulation Division

SUBJECT: Proposed Amendment to Rules 1.22, 2.51, 2.53, 2.55, 2.71 of the Rules of the State Bar and Proposed New Rules 2.140–2.153 of the Rules of the State Bar Relating to Regulatory Function of the State Bar: Request for Adoption

EXECUTIVE SUMMARY

This agenda item requests approval of several proposed rule changes to streamline the Board's review of the State Bar's annual Schedule of Charges and Deadlines and to make amendments to the New Attorney Training (NAT) program.

In November 2023, the Board of Trustees voted to circulate for public comment the proposed amendment to rule 1.22 of the Rules of the State Bar. The proposed amendment returns following a 60-day public comment period.

Proposed amendments to rules 2.51, 2.53, 2.55, 2.71, and proposed new rules 2.140, 2.141, 2.142, 2.143, 2.144, 2.150, 2.151, 2.152, 2.153 of the Rules of the State Bar were adopted by the Board at the September 2023 meeting, subject to the California Supreme Court's approval of proposed new rule 9.32 and proposed amendments to rule 9.49 of the California Rules of Court without any material changes. These proposed amendments, a new, nonsubstantive amendment to rule 2.55, and proposed new rules now return to the Board of Trustees following Supreme Court action on the Rules of Court.

RECOMMENDED ACTION

This item recommends formal adoption of amendments to rule 1.22 regarding the State Bar's annual Schedule of Charges and Deadlines and amendments of existing rules and adoption of new rules regarding the NAT program.

DISCUSSION

PROPOSED AMENDMENTS TO RULE 1.22 (DEFINITIONS)

The proposed amendments revise the definition of the “Schedule of Charges and Deadlines” to allow the Board of Trustees to amend only the portions of the “Schedule of Charges and Deadlines” that are changing without needing to readopt the entire “Schedule of Charges and Deadlines” whenever a change is made to a particular item.

Staff has interpreted the rule’s current language to require that the Board review and adopt the entire Schedule of Charges and Deadlines each year. Staff recommends amending the rule to allow the Board to amend and adopt only the portions of the Schedule of Charges and Deadlines that are being revised, with all other portions of the Schedule of Charges and Deadlines that are not being changed remaining the same and in effect, rather than adopting the entire Schedule of Charges and Deadlines. The Board of Trustees voted to circulate the proposed amendment to rule 1.22 of the Rules of the State Bar for public comment at the November 2023 meeting of the Board of Trustees. See item [50-5 NOVEMBER 2023](#) and the [Open Session Minutes](#) for that item.

Public Comment

Following a 60-day public comment period, the State Bar received two comments. The first commentor agreed with the proposed rule but did not leave any meaningful comments. The second commentor disagreed with the proposed rule and commented: “Fees should be strictly scrutinized every year. Inactive attorneys should not be punished for passing the bar exam and required to pay fees every year that they are not practicing law until they die. Active fees are burdensome and should be scrutinized at a time when wages are low, we are facing increasing income inequality and poor hiring and the state bar has been found guilty of waste by the auditor in previous years.”

Proposed amendments to rules 2.51, 2.53, 2.55, 2.71, and proposed new rules 2.140, 2.141, 2.142, 2.143, 2.144, 2.150, 2.151, 2.152, 2.153 of the Rules of the State Bar pertaining to the NAT program

Proposed amendments to rules 2.51, 2.53, 2.71, and proposed new rules 2.140, 2.141, 2.142, 2.143, 2.144, 2.150, 2.151, 2.152, 2.153 of the Rules of the State Bar separate the NAT program from Minimum Continuing Legal Education (MCLE) and ensure exemptions from MCLE requirements do not apply to the NAT program.

Proposed amendment to Rule 2.51 (Definitions)

The proposed amendment removes the term “State Bar New Attorney Training” from rule 2.51.

Proposed amendments to Rule 2.53 (New licensees)

The proposed amendments remove subdivisions related to the NAT program.

Proposed amendments to Rule 2.55 (Modifications)

The proposed amendments make a non-substantive grammatical clarification that MCLE compliance requirements remain in effect unless a modification is approved by the State Bar.

Proposed amendment to Rule 2.71 (Compliance periods)

The proposed amendment removes a subdivision related to the NAT program.

Proposed new Rule 2.140 (Definition of New Attorney Training)

The proposed new rule states the purpose of the NAT program.

Proposed new Rule 2.141 (Compliance Period)

The proposed new rule combines portions of the current rule 2.53 and 2.71 related to NAT compliance while omitting language in the current rule 2.53 that associated parts of the NAT program with MCLE requirements.

Proposed new Rule 2.142 (Relationship to MCLE)

The proposed new rule highlights that the NAT program is not MCLE, but that the NAT program hours may be applied to their MCLE requirements if the hours are completed within the licensee's MCLE compliance period.

Proposed new Rule 2.143 (Exemptions)

The proposed new rule states that there are no exemptions from the NAT program.

Proposed new Rule 2.144 (Modifications)

The proposed new rule provides similar language to the proposed amended rule 2.55, but as specifically pertaining to modifications of the NAT program.

Proposed new Rule 2.150 (Definition)

The proposed new rule defines "noncompliance" of the NAT program as a failure to complete the program, as specified, or to pay fees for noncompliance.

Proposed new Rule 2.151 (Notice of noncompliance)

The proposed new rule subjects licensees to involuntarily enrollment as inactive if they do not comply with the terms of a notice of noncompliance.

Proposed new Rule 2.152 (Enrollment as inactive for State Bar New Attorney Training noncompliance)

The proposed new rule states that licensees who fail to comply with a notice of noncompliance are administratively enrolled as inactive, with no hearing requirement, and are not eligible to practice law.

Proposed new Rule 2.153 (Reinstatement following State Bar New Attorney Training noncompliance)

The proposed new rule terminates inactive enrollment due to noncompliance with the NAT program once the licensee has completed the NAT program and has paid the applicable noncompliance and reinstatement fees.

With the exception of proposed changes to rule 2.55, these proposed rules were previously circulated for public comment and subsequently adopted by the Board at the September 2023

meeting, subject to the California Supreme Court's approval of proposed new rule 9.32 and proposed amendments to rule 9.49 of the California Rules of Court without any material changes. See item [60-3 SEPTEMBER 2023](#) and the [Open Session Minutes](#) for that item. The change to rule 2.55 is a nonsubstantive change made for grammatical clarity. A similar nonsubstantive change was made to proposed rule 2.144 after it went out for public comment.¹ Pursuant to rule 1.10 of the Rules of the State Bar, the Board may adopt these nonsubstantive changes without recirculating them for public comment.

In Administrative Order 2023-12-20-02 (S282532) (Attachment E), the Supreme Court approved adoption of proposed new Rule of Court 9.32 and denied the proposed revisions to rule 9.49. In a letter explaining the decision, the Clerk and Executive Officer of the Supreme Court stated that the court approved the adoption of new rule 9.32, which served to carve out the New Attorney Training (NAT) program from the Minimum Continuing Legal Education (MCLE) program, but that the proposed amendment to the provisional licensure rule (rule 9.49) was not necessary. As such, staff is returning to the Board and asking the Board to readopt the changes to the Rules of the State Bar.

While the public comments were included in the September 2023 agenda item, during the 60-day public comment period, staff received two public comments on the proposed amendments to the rules governing the NAT program. One commentor expressed agreement with the proposals without further comment. The other commenter expressed disagreement with the proposed recommendations and provided the following comment: "No "NAT" rule which is not clearly identified under ABA or CA rules. Vague description of changes to unspecified rules is not helpful. Oppose all unclear rule making." The commenter appears to have been confused and was looking for the NAT program in the Rules of Professional Conduct rather than the Rules of the State Bar.

PREVIOUS ACTION

Proposed amendments to rule 1.22 of the Rules of the State Bar were considered by the Board in November 2023. See item [50-5 NOVEMBER 2023](#) and the [Open Session Minutes](#) for that item.

Proposed amendments to rules 2.51, 2.53, 2.71, and proposed new rules 2.140, 2.141, 2.142, 2.143, 2.144, 2.150, 2.151, 2.152, 2.153 of the Rules of the State Bar were adopted by the Board at the September 2023 meeting. See item [60-3 SEPTEMBER 2023](#) and the [Open Session Minutes](#) for that item.

FISCAL/PERSONNEL IMPACT

None

¹ The last sentence of the language circulated for public comment, which states "The State Bar must approve any modification," has been replaced with "Compliance requirements remain in effect unless a modification is approved by the State Bar."

AMENDMENTS TO RULES

Title 1, Division 3, Rule 1.22
Title 2, Division 4, Chapter 1, Rule 2.51
Title 2, Division 4, Chapter 1, Rule 2.53
Title 2, Division 4, Chapter 1, Rule 2.55
Title 2, Division 4, Chapter 2, Rule 2.71
Title 2, Division 6, Chapter 1, Rule 2.140
Title 2, Division 6, Chapter 1, Rule 2.141
Title 2, Division 6, Chapter 1, Rule 2.142
Title 2, Division 6, Chapter 1, Rule 2.143
Title 2, Division 6, Chapter 1, Rule 2.144
Title 2, Division 6, Chapter 2, Rule 2.150
Title 2, Division 6, Chapter 2, Rule 2.151
Title 2, Division 6, Chapter 2, Rule 2.152
Title 2, Division 6, Chapter 2, Rule 2.153

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None – core business operations

RESOLUTIONS

Should the Board of Trustees, sitting as the Regulation and Discipline Committee, concur, it is:

RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts the proposed amendments to rule 1.22 of the Rules of the State Bar, as set forth in Attachment A; and it is

FURTHER RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, deems the modification to proposed rule 2.144 made after the proposed rule was circulated for public comment, as set forth in Attachment C, is non-substantive and reasonably implicit in the proposal; and it is

FURTHER RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, adopts the proposed amendments to rules 2.51, 2.53, 2.55, 2.71 of, and adopts the proposed rules 2.140, 2.141, 2.142, 2.143, 2.144, 2.150, 2.151, 2.152, and 2.153 of, the Rules of the State Bar, as those proposed amendments and proposed rules are set forth in Attachment C; and it is

FURTHER RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, directs staff to revise and renumber all footnotes in Title 2, Division 4

(commencing with rule 2.50) of the Rules of the State Bar to allow for proper sequential references following the adoption of the amendments pursuant to this resolution.

ATTACHMENTS LIST

- A.** Proposed Rule 1.22 of the Rules of the State Bar (Clean Version)
- B.** Proposed Rule 1.22 of the Rules of the State Bar (Redline Version)
- C.** Proposed Rules 2.51, 2.53, 2.55, 2.71, 2.140, 2.141, 2.142, 2.143, 2.144, 2.150, 2.151, 2.152, and 2.153 of the Rules of the State Bar (Clean Version)
- D.** Proposed Rules 2.51, 2.53, 2.55, 2.71, 2.140, 2.141, 2.142, 2.143, 2.144, 2.150, 2.151, 2.152, and 2.153 of the Rules of the State Bar (Redline Version)
- E.** Supreme Court Administrative Order 2023-12-20-02 (S282532)