



# THE STATE BAR OF CALIFORNIA

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**DATE:** August 30, 2010

**TO:** Members of the Board Committee on Operations

**FROM:** Starr Babcock, General Counsel  
Dina E. Goldman, Staff Attorney

**RE:** State Bar Rule 7.8 re JNE Records, Proposed Amendment

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## EXECUTIVE SUMMARY

This item recommends that the Board Operations Committee, acting on behalf of the full Board between regular meetings, adopt an amendment to State Bar Rule 7.8, effective immediately on an interim basis, regarding the return of electronic information related to the JNE process when commissioners leave office. This interim rule would be subject to a 45 day public comment period before a final recommendation by the committee and action by the Board.

Rule 7.8 of the Rules of the State Bar (superseding former Rules and Procedures of the Commission on Judicial Nominees Evaluation, rule III, section 4), has always required outgoing commissioners to return all JNE documents to the State Bar when they leave office. Given this year's new "paperless" e-procedure for JNE, it is necessary to amend Rule 7.8 to clarify that the rule applies to electronic records as well as paper records.

## **BACKGROUND**

State Bar Rule 7.8 currently provides that, upon completion of their term, JNE commissioners must forward all Confidential Comment Forms and other records related to commission investigations and activities to the State Bar. During the past year, the JNE Commission began sending electronic versions of

Confidential Comment Forms. Since this new “paperless” initiative will result in JNE Commissioners having possession of electronic as well as paper records related to JNE activities, staff recommends that Rule 7.8 be amended to clarify that electronic records are included in the scope of the rule.

### **SUMMARY OF PROPOSAL**

The proposed amendment to Rule 7.8 adds a sentence that clarifies that the rule requires JNE Commissioners who have completed their term to transfer all electronic records in their possession to the State Bar and also delete any records from electronic devices not issued by the State Bar.

### **LENGTH OF PUBLIC COMMENT PERIOD & REASON**

Under State Bar Rule 1.10(C), the Board may adopt a rule on an interim basis without circulating for public comment if it finds that an emergency exists. Since this is a clarifying amendment and is designed to protect confidentiality and ensure the security of JNE records, it would be best to have the rule in place as soon as possible. Therefore, staff recommends that the Board Operations Committee adopt the rule immediately on an interim basis and simultaneously circulate the amended rule for a 45 day public comment period.

### **EFFECTIVE DATE OF PROPOSAL**

The rule amendment will be effective immediately on an interim basis upon approval by the Board Operations Committee. Following public comment, the rule amendment will return to the full Board for ratification.

### **FISCAL AND PERSONNEL IMPACT**

None.

### **RULE AMENDMENTS**

Rule 7.8

### **BOARD BOOK ADMINISTRATION MANUAL IMPACT**

None.

## **BOARD COMMITTEE RECOMMENDATION**

Staff recommends that the Board Operations Committee adopt the proposed amendment on an interim basis effective immediately and simultaneously circulate the amended rule for a 45 day public comment period.

## **PROPOSED BOARD COMMITTEE RESOLUTION**

Should the Board Committee on Operations agree with the proposed recommendation, adoption of the following resolution would be appropriate.

**RESOLVED**, that the Board Committee on Operations, acting on behalf of the Board of Governors between regular meetings, hereby adopts on an interim basis the proposed revisions to State Bar Rule 7.8 in the form attached; and it is

**FURTHER RESOLVED**, that the Board Committee on Operations hereby authorizes staff to make available for public comment for a period of 45 days the revisions to State Bar Rule 7.8 in the form attached.

## **Amendment to Title 7, Division 1, Chapter 1, of the Rules of the State Bar**

### Rule 7.8 Commission records

(A) Upon completion of his or her service or term, a commissioner must forward to the State Bar for retention for two years any completed Confidential Comment Forms and other records related to a commission investigation or activity. Copies of records stored electronically must be transferred to the State Bar and deleted from any electronic device not issued by the State Bar. After two years, all the forms and other documents related to an investigation or activity must be destroyed, unless the Board of Governors, its President, or the chair instructs otherwise.

(B) Records related to a Review Committee decision must be destroyed three years after the decision.

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