

# AGENDA ITEM

**DATE:** December 9, 2010

**TO:** Members, Board Committee on Regulation, Admissions and Discipline Oversight

**FROM:** Staff

**SUBJECT:** Proposed Amendments to California Rule of Court 9.21 (Resignations with Disciplinary Charges Pending): Request for Public Comment

---

## EXECUTIVE SUMMARY

Rule 9.21 of the California Rules of Court specifies the requirements that apply when a member of the State Bar submits a written resignation while disciplinary charges are pending against the member. Rule 9.21 states requirements up to the point where the California Supreme Court acts to accept or reject the resignation. Among other things, the member must agree to be transferred to inactive membership status upon the filing of his or her resignation in the clerk's office of the State Bar Court.

This agenda item requests a 45-day period of public comment on proposed amendments to Rule 9.21. The amendments address the membership status of a member whose resignation is not accepted by the Supreme Court. The amendments also require a member who resigns with charges pending to waive confidentiality of any disciplinary or Client Security Fund matter pending against the member.

Any questions or comments may be directed to Colin Wong at (415) 538-2233 or [colin.wong@calbar.ca.gov](mailto:colin.wong@calbar.ca.gov), or Jim Towery at (415) 538-2063 or [jim.towery@calbar.ca.gov](mailto:jim.towery@calbar.ca.gov), or Mary Yen at (415) 538-2369 or [mary.yen@calbar.ca.gov](mailto:mary.yen@calbar.ca.gov).

---

## BACKGROUND

This agenda item requests a 45-day period of public comment on proposed amendments to California Rules of Court, Rule 9.21 ("Rule 9.21"), which deals with a member's resignation while disciplinary charges are pending against the member ("resignation"). Following public comment, if the Board of Governors concurs with the proposed amendments, the Board's recommendation will be transmitted to the California Supreme Court for consideration and action.

## **ISSUE**

Whether to authorize a 45-day period of public comment on proposed amendments to Rule 9.21 of the California Rules of Court.

## **CONCLUSION**

If your board committee wishes to authorize publication of the proposal for comment, a 45-day period of public comment is appropriate.<sup>1</sup> After public comment, if the Board concurs with the proposed amendments to Rule 9.21, the Board's recommendation will be transmitted to the California Supreme Court for consideration and action.

## **DISCUSSION**

Rule 9.21 states the substantive and procedural requirements when a member of the State Bar submits a resignation while disciplinary charges are pending. Subpart (a)'s general provisions include a requirement that the member agree to be transferred to inactive membership effective on the filing of the resignation by the State Bar. Subpart (b) states the conditions and other terms of the resignation in a form format. The member must sign and date a written form resignation containing the conditions and terms as stated in subpart (b), and cannot substitute his or her own statement. Subpart (c) states what the State Bar Court must consider in making a recommendation to the California Supreme Court to accept or reject the resignation. Subpart (d) states the Supreme Court may make such orders as it deems appropriate, and lists nine grounds that the State Bar Court must consider in making the recommendation to the Supreme Court.

This past year, a number of tendered resignations have not been accepted by the Supreme Court. Attention given to these rejected resignations showed that there is an ambiguity as to the membership status of members after their resignations are rejected because Rule 9.21 does address their membership status.

This proposal would add a new subpart (e), which begins with a statement that a member whose resignation with charges pending is not accepted by the Supreme Court remains on inactive status, and then specifies what must be done by the member, the Office of the Chief Trial Counsel, and the State Bar Court if the member wishes to be restored to active status. The requirements in proposed subpart (e) are based on requirements stated in the Supreme Court's orders for recently rejected resignations. The form language in subpart (b) would also be amended to add a statement that if the

---

<sup>1</sup> State Bar Rule 1.10 [Public comment] states, in relevant part: "A) Proposals for the Rules of the State Bar of California are circulated for public comment before adoption, amendment, or repeal by the Board of Governors. The State Bar also makes available for public comment its proposals for the California Rules of Court. Proposals are circulated for a forty-five day period, which can be shortened to a minimum of 30 days or extended to a maximum of 90 days, as designated by the board."

Supreme Court does not accept the resignation, the member will remain an inactive member pending any further order of the State Bar Court or the Supreme Court.

The proposal would also amend subparts (a) and (b) to require the member to agree to waive the confidentiality of any pending disciplinary complaints, investigations or Client Security Fund (“CSF”) matters. By submitting a voluntary resignation, a member puts at issue the facts surrounding his or her disciplinary and CSF matters. Furthermore, the Review Department is required to consider all information in order to provide the Supreme Court with an accurate account of the circumstances surrounding the member’s resignation. More importantly, maintaining confidentiality of the information surrounding voluntary resignations with charges pending would undermine the public protection of the public, the courts and the legal profession.

Proposed Rule 9.21 would be amended as follows (proposed new language is underlined):

**Rule 9.21. Resignations of Members of the State Bar with Disciplinary Charges Pending**

**(a) General Provisions**

A member of the State Bar against whom disciplinary charges are pending may tender a written resignation from membership in the State Bar and relinquishment of the right to practice law. The written resignation must be signed and dated by the member at the time it is tendered and must be tendered to the Office of the Clerk, State Bar Court, 1149 South Hill Street, Los Angeles, California 90015. The resignation must be substantially in the form specified in (b) of this rule. In submitting a resignation under this rule, a member of the State Bar agrees to be transferred to inactive membership in the State Bar effective on the filing of the resignation by the State Bar, and to waive the confidentiality of any disciplinary complaints, investigations or Client Security Fund matters pending against the member. Within 30 days after filing of the resignation, the member must perform the acts specified in rule 9.20(a)(1)-(4) and (b) and within 40 days after filing of the resignation, the member must file with the Office of the Clerk, State Bar Court, at the above address, the proof of compliance specified in rule 9.20(c). No resignation is effective unless and until it is accepted by the Supreme Court after consideration and recommendation by the State Bar Court.

**(b) Form of Resignation**

The member's written resignation must be in substantially the following form:

"I, [name of member], against whom charges are pending, hereby resign as a member of the State Bar of California and relinquish all right to practice law in the State of California. I agree that, in the event that this resignation is accepted and I later file a petition for reinstatement, the State Bar will consider in connection therewith all disciplinary matters and proceedings against me at

the time this resignation is accepted, in addition to other appropriate matters. I also agree that the Supreme Court may decline to accept my resignation unless I reach agreement with the Chief Trial Counsel on a written stipulation as to facts and conclusions of law regarding the disciplinary matters and proceedings that were pending against me at the time of my resignation[.] I further agree that, on the filing of this resignation by the Office of the Clerk, State Bar Court, I will be transferred to inactive membership of the State Bar. On such transfer, I acknowledge that I will be ineligible to practice law or to advertise or hold myself out as practicing or as entitled to practice law. I further acknowledge that in the event the Supreme Court does not accept my resignation, I will remain an inactive member of the State Bar, pending any further order of the State Bar Court or Supreme Court. I further agree that, within 30 days of the filing of the resignation by the Office of the Clerk, State Bar Court, I will perform the acts specified in rule 9.20(a)-(b) of the California Rules of Court, and within 40 days of the date of filing of this resignation by the Office of the Clerk, State Bar Court, I will notify that office as specified in rule 9.20(c) of the California Rules of Court. I hereby waive the confidentiality of any disciplinary complaints, investigations or Client Security Fund matters pending against me."

#### **(c) Consideration of Resignation by State Bar Court and Supreme Court**

When the Office of the Clerk of the State Bar Court receives a member's resignation tendered in conformity with this rule, it must promptly file the resignation. The State Bar Court must thereafter consider the member's resignation and the stipulated facts and conclusions of law, if any, agreed upon between the member and the Chief Trial Counsel, and must recommend to the Supreme Court whether the resignation should be accepted. The State Bar Court's recommendation must be made in light of the grounds set forth in subsection (d) of this rule and, if the State Bar Court recommends acceptance of the resignation notwithstanding the existence of one or more of the grounds set forth in subsection (d), the State Bar Court's recommendation must include an explanation of the reasons for the recommendation that the resignation be accepted. The Office of the Clerk of the State Bar Court must transmit to the Clerk of the Supreme Court, three certified copies of the State Bar Court's recommendation together with the member's resignation, when, by the terms of the State Bar Court's recommendation, the resignation should be transmitted to the Supreme Court.

#### **(d) Grounds for Rejection of Resignation by the Supreme Court**

The Supreme Court will make such orders concerning the member's resignation as it deems appropriate. The Supreme Court may decline to accept the resignation based on a report by the State Bar Court that:

- (1) Preservation of necessary testimony is not complete;
- (2) After transfer to inactive status, the member has practiced law or has advertised or held himself or herself out as entitled to practice law;

(3) The member has failed to perform the acts specified by rule 9.20(a)-(b);

(4) The member has failed to provide proof of compliance as specified in rule 9.20(c);

(5) The Supreme Court has filed an order of disbarment as to the member;

(6) The State Bar Court has filed a decision or opinion recommending the member's disbarment;

(7) The member has previously resigned or has been disbarred and reinstated to the practice of law;

(8) The member and the Chief Trial Counsel have not reached agreement on a written stipulation as to facts and conclusions of law regarding the disciplinary matters and proceedings that were pending against the member at the time the resignation was tendered; or

(9) Acceptance of the resignation of the member will reasonably be inconsistent with the need to protect the public, the courts, or the legal profession.

**(e) Rejection of Resignation by Supreme Court**

A member whose resignation with charges pending is not accepted by the Supreme Court will remain an inactive member of the State Bar. The member may move the Review Department of the State Bar Court to be restored to active membership, at which time the Office of the Chief Trial Counsel may demonstrate any basis for the member's continued ineligibility to practice law. The Review Department will expedite a motion to be restored to active membership. Any return to active membership will be conditioned on the member's payment of any dues, penalty payments, and restitution owed by the member.

It is believed that the proposed amendments to Rule 9.21 do not require any amendment of the Rules of Procedure of the State Bar of California. The existing provisions of the Rules of Procedure can be used if a member wishes to be restored to active status.

**FISCAL / PERSONNEL IMPACT:**

None known.

**RULE AMENDMENTS:**

None known.

**BOARD BOOK IMPACT:**

None known.

**RECOMMENDATION**

It is recommended that your board committee authorize a 45-day period of public comment on the proposed amendments to Rule 9.21 of the California Rules of Court.

**PROPOSED BOARD COMMITTEE RESOLUTION:**

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

**RESOLVED**, that the Board Committee on Regulation, Admissions and Discipline Oversight hereby authorizes staff to make available for public comment for a period of 45 days, the proposed amendments to Rule 9.21 of the California Rules of Court, in the form attached in Attachment A; and it is

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

Attachment: Attachment A, Proposed Amendments to California Rule of Court 9.21