

Q1: Why is the MSBA proposing new rules for the Email Discussion Lists?

A: MSBA Email Discussion Lists have always been subject to terms and conditions. As the MSBA has been working to update its governing rules including most recently its bylaws, it became apparent that the rules governing the Email Discussion Lists were out of date, did not contain the correct information for methods of unsubscribing, did not provide the proper contact information for MSBA staff to assist with technological issues, and that enforcement varied by section/committee. MSBA Leadership requested that the rules be reviewed and revised, and by looking to other state Bar's a model, to ensure an up-to-date, uniform set of rules was created for all lists. Prior to submitting to the Board for approval, it was requested that a 30-day comment period be open to allow members to provide comments and feedback.

Q2: Has MSBA Leadership provided any communication regarding the proposed rules?

A: Yes. On Monday, September 10, 2018 MSBA President, Hon. Keith Truffer, posted the following message on all MSBA Email Discussion Lists:

Good morning to all MSBA members and email discussion list users,

The MSBA email discussion lists are one of the most popular benefits provided to members. (I know that you know this because...well, you are reading this on an email discussion list.) Last year, the MSBA Executive Committee sought and approved moving forward on a set of guidelines governing the appropriate use of the MSBA email discussion lists. The new guidelines benefitted from a review of the rules governing other state bars' lists. In reviewing the standard language and processes in effect at other state bars, we wanted to ensure that the value of the lists, as a means of sharing information related to the practice of law and the legal profession, were maintained or enhanced.

In addition to relying on commonly used rules at other state Bars, we are incorporating comments from our members comments. The final language will be stronger as a result. I'm sending this message to make sure everyone understands what we are doing in this process.

On Tuesday, September 5, 2018, these guidelines were circulated to all members for a 30-day comment period so that we could hear from members directly on the new rules. Some comments received thus far suggest the new rules are an attempt to limit discussion about the MSBA as the goal. That isn't the case. In fact we have created a short list of responses to some recurring questions and comments which can be found [here](#).

The officers, Executive Committee and Board of Governors all desire guidelines that are helpful in continuing the email discussion lists as a vehicle for respectful discourse where practical information is shared, ideas to enhance your practice are circulated, and connections are forged.

Thanks to all who have engaged in this comment period.

Keith R. Truffer
MSBA President

Q3: Does the MSBA actively monitor the Email Discussion Lists?

A: Although the MSBA may periodically review discussions on various lists it does not actively monitor the 30+ active Email Discussion Lists, which can produce upwards of 500+ messages per day on a variety of topics and concerns. Rather, to the extent a member has feedback or questions for MSBA Leadership or staff, they should be directed to feedback@msba.org. In many cases, questions and/or comments received by the MSBA are reported to the membership through various avenues, including the Inner Workings page, the Inner Workings Newsletter, FAQs, the MSBA Weekly email, and MSBA publications including the Bar Bulletin and the Bar Journal.

Q4: Will members be able to discuss issues related to the MSBA under the Proposed Rules?

A: Yes. The purpose of the proposed rules is to bolster constructive dialogue amongst legal professionals on a variety of topics related to the practice of law. It is not the MSBA's intention to limit discussions about the MSBA as subject matter on the lists. Rather, language was included in the proposed rules to address incidents whereby members were asking MSBA to respond to question or claims made solely via the lists, which, as noted in Q3 are not and cannot be actively monitored by the MSBA.

Q5: How can I provide feedback, comments or suggested language for the proposed rules?

A: Comments, feedback, and/or suggested language can be submitted by email to feedback@msba.org with the subject line "Email Discussion Lists Commentary." Copies of the existing rules, proposed rules, and the redline changes are available on the MSBA website under the "For Members" tab on the "Email Discussion Lists & Archives" page or by clicking [here](#).

Q6: What will the MSBA do with the feedback/comment received at feedback@msba.org?

A: All comments, feedback, and/or suggested language will be reviewed as part of the process to revise the existing rules. More specifically, the emails received will be collected, and along with a summary of all comments/feedback/suggestions received, will be transmitted to the MSBA Executive Committee (a current list of Executive Committee Members is available on the MSBA website under the “About” tab on the Leadership page or by clicking [here](#)). The Executive Committee will review the information, propose additional revisions, and submit recommendations, along with copies of the comments, to the Board of Governors for final approval.

Q7: Where do I go if I have additional questions about the MSBA or want to understand how it is being governed or be informed on key governance related matters?

A: Questions related to the MSBA governance, financials, leadership, etc. can be found on the Inner Workings page under the “For Members” tab or by clicking [here](#).

Q8: Has there been a change to the policy regarding whether non-MSBA CLE information may be posted to the Email Discussion Lists?

A: No. Under the Promotion/Solicitation section of the existing rules, promotions for non-MSBA CLE vendors were prohibited on the Email Discussion Lists. This rule has been in place since 2010, and is the industry standard for both State Bar Associations as well as other CLE providers. That said, the MSBA has received feedback and suggestions regarding this rule, which shall be reviewed as part of the process for finalizing the new rules.

Q9: Can members post to the Email Discussion Lists on behalf of non-members?

A: The Email Discussion Lists are a primary benefit offered by the MSBA, and are key factor in driving participation in MSBA Sections. In general, the lists have always prohibited individuals from posting to the lists that are not members of the section and/or list. In an effort to support the MSBA Sections, and understanding that such a rule is difficult to enforce, we ask that members of the lists honor the prohibition by not posting on behalf of other non-members.

Q10: Can members post requests for referrals or ask for recommendations on the lists?

A: Yes. The goal of the proposed rules is to foster relationships between legal professionals, which includes the ability to seek referrals for attorneys in other practice areas. This is explicitly outlined in No. 7 under the “General Rules of Posting” section of the proposed rules.

Q11: Has there been a change to the policy for “off-topic” posts, including posting of jokes, religious/political discussion, etc?

A: No. Such posts were previously prohibited under the existing rules. As part of the process for revising the rules, the MSBA has received feedback on this issue, including a proposal to create a separate email discussion list intended for the sole purpose of civil discourse related to political, religious, and other current events. This feedback and recommendation will be reviewed as part of the process to finalize the new rules.

Q12: Is the proposed policy on promotion of CLE or events on the lists changing or becoming more restrictive?

The existing policy with respect to promotion of CLE programs and publications, as adopted by the executive committee, has been in effect without issue since 2010. The proposed revisions are not intended to be more restrictive and/or prohibitive than the existing policy. The current language of the existing policy, which underlies the proposed rules and is intended to remain unchanged, is as follows:

Only MSBA sponsored continuing legal education (CLE) programs or publications may be promoted or advertised on the MSBA email discussion lists, website, e-newsletter, Bar Bulletin, or any other MSBA publications whether electronic or hardcopy. For the purposes of applying this policy, a CLE program is defined as a legal education program that is offered by a CLE provider accredited by any mandatory CLE state or states, and/or a legal education program for which credit is offered or has been applied for. The MSBA does not provide email addresses to other CLE providers or publishers, or any outside vendor. The MSBA will not sell mailing labels to any other CLE provider. This policy does not prevent any Section that partners with a third party on an educational program from promoting that program on or in any MSBA venues mentioned above, as long as the third party is not an accredited provider with any MCLE state.

We have feedback suggesting that the intention of this long standing policy may not be sufficiently clear. This feedback, along with all other feedback received, will be considered when developing any further revisions or refining the rules to be adopted by the Board of Governors.

In addition, we have received some feedback regarding intellectual property rights as it relates to Sections creating programs for CLE credit. Per the standard faculty agreement, which can be viewed by clicking [here](#), all presenters retain all rights to their materials and grant the MSBA a license to use.

