

AGENDA ITEM

704 NOVEMBER 2016

DATE: November 16, 2016

TO: Members, Board of Trustees

FROM: Elizabeth Rindskopf Parker, Executive Director
Leah Wilson, Chief Operating Officer

SUBJECT: Staff Report on Potential Efficiencies Relating to State Bar Sub-Entities and Appointments to External Entities

EXECUTIVE SUMMARY

At the September 12, 2016, Board of Trustees meeting, staff presented a report designed to advance Governance in the Public Interest Taskforce recommendations regarding State Bar committees and appointments to external entities. The Board directed staff to study the issues identified, and report the results at the Board's November 2016 meeting.

DISCUSSION

Each item identified at the September 12, 2016, Board meeting and the corresponding staff report follows below.

1. **Standing Committees. Direct staff to work with the a) Committee on Administration of Justice; b) Committee on Alternative Dispute Resolution; c) Committee on Appellate Courts; and d) Committee on Federal Courts, to develop a proposal to identify their core functions and to develop a proposal to transition those core functions from the Committees to another Committee, Section, or sub-entity of the Bar, thus reducing the number of Standing Committees by four. Further direct staff to report on transition steps, and provide a transition timeline, at the Board's November 2016 meeting.**

Staff Report

The core functions of the four standing committees include 1) providing educational programs for attorneys in the committee's area of subject matter expertise; and 2) analyzing and commenting, as authorized and approved, on proposed court rules, legislation and other proposals affecting the committee's subject matter area. In addition, each committee pursues unique functions in its particular subject matter area, and committees sometimes pursue new initiatives. For example, the Committee on Appellate Courts is currently exploring development of a pro bono appellate program.

The functions of these four standing committees align with the structure of the Litigation Section, which has its own subject matter committees. Consolidation would in fact take advantage of some existing overlap. The Litigation Section has its own ADR Committee. It also has a Rules and Legislation Committee and a Civil Jury Instructions Committee, both of which overlap with the work of the Committee on Administration of Justice. Federal Courts and Appellate Courts would be new Litigation Section committees.

Following the Board meeting on September 12, 2016, staff discussed this proposal with leadership of the standing committees and the Litigation Section's Executive Committee; the Executive Committee has voted to support the proposal, as broadly outlined.

The groups that have been involved in these discussions are enthusiastic about the potential new synergies resulting from this transition. The Litigation Section's Executive Committee is, however, anxious to avoid any resulting increase in its internal allocation or unanticipated direct costs. In anticipation of the transition, committee leadership has been invited to participate in the Litigation Section's planning meeting for 2017, and will be exploring various topics, including continuing education programming for 2017. While details and timing of any transition have yet to be finalized, staff believes that the transition can occur by January 1, 2017.

- 2. Access Related Sub-Entities. Direct staff to work with the a) Standing Committee on the Delivery of Legal Services; b) California Commission on Access to Justice; and c) Legal Services Trust Fund Commission, to identify their core functions, and to develop a proposal to reduce the number of entities performing those functions from three to two. Further direct staff to present that proposal, along with a transition timeline, at the Board's November 2016 meeting.**

Staff Report

The Office of Legal Services (OLS) has been working with the California Commission on Access to Justice (Access Commission), the Legal Services Trust Fund Commission (LSTFC), and the Standing Committee on the Delivery of Legal Services (SCDLS) in response to the Board's direction.

The Access Commission was established at the request of the Board of Trustees in 1997 to pursue long-term fundamental improvements in California's civil justice system so that it is accessible for all, regardless of income, geography, language ability, or other factors. The Access Commission is comprised of 26 appointed members who reflect a unique non-partisan entity of lawyers, judges and leaders in academia, business, and labor. Members are appointed by 15 entities, including the State Bar, with 10 appointees.¹ In addition, attorneys and judges from the broader justice community actively participate on any number of the Commission's 15 committees as non-appointed members.

¹ The other 16 appointees consist of two each by the Governor and the Judicial Council, and one each by President Pro Tem of the Senate, Speaker of the Assembly, California Attorney General, Supreme Court of California, California Judges Association, Legal Aid Association of California, Council of California County Law Librarians, California Council of Churches, League of Women Voters of California, California Chamber of Commerce, California Labor Federation, and Consumer Attorneys of California.

While the State Bar has provided consistent staffing and administrative support to the Commission, it has functioned independently without significant Board oversight. Further, other appointing entities also provide significant in-kind and other support to the Commission.

The Legal Services Trust Fund Commission is entrusted with oversight of the statutory legal services grants process including the IOLTA program, Equal Access and Justice Gap funds, State Bar dues bill contributions, and the Bank Stabilization and Community Reinvestment grants. Its membership is comprised of 24 appointed members (21 voting members and 2 non-voting judicial officers), including 14 State Bar appointees.² The legislature created the Legal Services Trust Fund Program in 1981, and the Board created the Legal Services Trust Fund Commission shortly thereafter to provide oversight of grants administration.

The Standing Committee on the Delivery of Legal Services (SCDLS) was created by the Board of Trustees in 1999, upon the sunset of the former Legal Services Section. It is comprised of 20 members all appointed by the Board of Trustees. Approximately two-thirds are attorneys employed by an IOLTA-funded organization and one-third are attorneys from the private bar, courts, nonprofit, government or academic settings. SCDLS is charged with identifying, developing and supporting improvements in the delivery of legal services to low and moderate income Californians.

Given that both the Access Commission and the LSTFC are comprised of both State Bar and non-State Bar appointees, effectuation of the Board's direction to study consolidation of access to justice related committees from three to two necessarily must focus on SCDLS. Because the LSTFC is specifically focused on the distribution of funds, staff recommends that the Access Commission absorb the work of SCDLS thereby accomplishing the Board's committee reduction directive. SCDLS is in favor of this proposal.

The Access Commission will discuss this recommendation at its December 6 meeting. Given that the Access Commission has operated quite independently over the years, staff recommends that the Commission be given the opportunity to vet and approve the proposed integration of SCDLS prior to the Board taking official action to eliminate it. Staff further recommends that, if the Access Commission does in fact absorb the work of SCDLS, the Board increase the number of appointees to the Commission from 10 to 12, dedicating the two additional seats for staff from nonprofit legal services and pro bono organizations.

- 3. Direct staff to work with the Committee on Group Insurance Programs and Committee on Professional Liability Insurance, to develop a proposal to combine those two Standing Committees and present that proposal, along with a transition timeline, at the Board's November 2016 meeting.**

Staff Report

Staff has met with both the Committee on Group Insurance Programs (COGIP) and the Committee on Professional Liability Insurance (COPLI), and recommends combining these committees into a joint insurance committee. Currently, COGIP and COPLI each have fifteen members. Staff recommends that the new joint committee have a total of fifteen members, seven from COGIP and eight from COPLI.

² The remaining voting and non-voting members are appointed by the Judicial Council.

The joint committee's first charge would be to oversee the Professional Liability Insurance product, Mediator's and Arbitrator's Liability Insurance, and Business Office Package Insurance. These products are sponsored by the State Bar and offered exclusively to California admitted attorneys. A New Admittee Professional Liability product is also offered and managed as a subset of the larger Professional Liability program. This overall Professional Liability program has the congruent goals of providing attorneys with insurance coverage and clients with recourse for malpractice.

The joint committee would also oversee six insurance products on the health and disability side. These would include: Life, Accidental Death & Dismemberment; Disability; Long Term Care; Workers Compensation; and Healthcare.

The initial draft of this proposal has been presented to both COGIP and COPLI, and discussed in detail with the leadership of each. While there is a general understanding of the need to reduce the number of Board committees, both entities have concerns relating to the challenges of a single committee managing such a large product suite and the potential loss of expertise resulting from a reduction in overall membership. In addition, combining COGIP and COPLI raises a number of potential issues involving committee relationships with insurance carriers and brokers that are part of the State Bar sponsored insurance programs. For these reasons, staff recommends that this proposal be referred for further study to Stakeholders, Access to Justice, and Appointments (the Board Committee with oversight over COGIP and COPLI) reporting back to the Board no later than March 2017 with a proposal.

- 4. Specialization Advisory Commissions. Direct staff to work with the California Board of Legal Specialization, to consider the continued need for 11 Advisory Commissions, and whether the decision to use reserve funding for professional exam preparation and grading will impact the need for those Advisory Commissions. Further direct staff to present the conclusions, along with any proposed changes, at the Board's November 2016 meeting.**

Staff Report

The California Board of Legal Specialization (CBLS) met on September 30 and October 1, 2016, to consider the Board's directive and reached a consensus that there is a continuing need for the Advisory Commissions, although certain procedural changes might be appropriate.

Advisory Commission Overview

There is currently an Advisory Commission for each of the 11 areas of specialization; these Commissions operate at the direction of the CBLS.

The Advisory Commissions serve a number of functions, which include, by subject matter area:

1. Examination development, grading, and guidance;
2. Auditing of educational offerings and encouragement of high quality educational offerings;
3. Updating tasks and standards for each different area of specialization, which requires the expertise of experts from each of the 11 different areas of specialization;
4. Communication of public protection benefits of specialization to consumers;

5. Mentorship of new attorneys seeking certification as specialists;
6. Updating examination specifications;
7. Setting learning objectives; and
8. Providing a leadership ladder to the CBLS, which ensures that subject matter experts are familiar with program operations before moving up to strategic leadership on the CBLS.

The primary basis for the CBLS position that the 11 Advisory Commissions continue to be needed is that the CBLS itself does not have sufficient expertise in each area of specialization to substitute for the Commissions. With 11 areas of specialty, and only 15 members on the CBLS, three of whom are public members, it is unlikely that there would ever be a circumstance where each specialty area was “covered” by a CBLS member; this will be even more true as the number of specialties continues to grow, which is one of several CBLS goals.

The Board of Trustees specifically asked about the impact of replacing volunteers with paid examination developers and graders on the continued need for Advisory Commissions³. CBLS believes that, while it is true that the bulk of exam development and grading work will no longer be the day-to-day responsibility of the Advisory Commissions, the Commissions will still have a role in ensuring that the examinations are developed and graded in a timely and appropriate manner. Advisory Commissioners will also continue to have a role as subject matter experts.

In addition to identifying the continued need for the 11 Advisory Commissions, CBLS also noted that it has implemented a number of efficiencies in recent years including:

1. Reducing the size of the CBLS from 26 members to 15, with a leadership ladder, more public members (3) and an increase in term length to four years from three.
2. Delegating a certain portion of the straightforward education provider approval processing to staff, which reduced the Advisory Commission duties, resulting in a reduction of travel costs.
3. Placing standard applications for certification that appear to meet all requirements on a consent calendar for faster review.
4. Improving the application materials and access, updating the website, and the general e-mail inbox so that overall call volume has been reduced.
5. Streamlining the examination development process to allow quicker results with higher quality, which has significantly reduced travel costs.
6. Initiating substantive foundational work to create secure banks of questions for each area of specialization with the eventual goal of offering examinations more frequently and at a reasonable cost.
7. Scheduling meetings at the State Bar offices rather than at hotels, which had been the prior practice.
8. Providing agendas and materials via a secure electronic file storage system, eliminating significant delay and cost from overnight mail.

Although the CBLS continues to support the need for its Advisory Commissions, it does recommend a modification to the underlying appointment process, which would reduce the role of the Board in that effort. Specifically, the CBLS, as opposed to the Board, could be responsible for appointing Advisory Commission members and officers. Making this change would underscore the fact that these are not 11 separate commissions with their own agendas,

³ The CBLS plan to transition to professional exam development and grading was considered by the Board earlier this year.

but rather one Board, advised by subject matter experts in 11 key areas toward a single goal of public protection. In addition, with the change in the examination development and grading process, it is anticipated that fewer meetings for the Advisory Commissions could take place, especially after a transition period.

With CBLS' concerns and arguments in mind, staff recommends that the Advisory Commissions be maintained. Staff also recommends that 1) the appointment process for the Advisory Commissions be modified so that CBLS, rather than the Board of Trustees, makes Commission appointments; and 2) this proposed modification be referred to the Stakeholders, Access to Justice, and Appointments Committee to effectuate, subject to full Board approval.

- 5. Judicial Nominees Evaluation. Direct staff to work with the Judicial Nominees Evaluation (JNE) Commission, to consider the continued need for the Review Committee of the JNE Commission (RJNE), and whether staff could perform the work of RJNE. Further direct staff to present its conclusions, along with any proposed changes, at the Board's November 2016 meeting.**

Staff Report

The Review Committee (RJNE) was established pursuant the State Bar Rules, Title 7, Division 1 (Commission on Judicial Nominees Evaluation). RJNE is a five-member committee charged with reviewing requests from candidates who seek reconsideration of a "not qualified" rating by the JNE Commission. RJNE is composed of two members of the Board of Trustees (one lawyer member and one public member), one past member of the JNE Commission, and two at-large members.

In the course of handling an appeal, the RJNE Chair may ask the member assigned to lead the investigation to draft a written summary and recommendation that will only be disclosed to the other members of the committee. Applicants to RJNE "should possess attorney or other legal-related experience, knowledge of the judiciary, strong analytical skills and an ability to assess confidential information in a thorough and objective manner."

After review, staff recommends retaining RJNE under the existing structure.

- 6. CYLA. Direct staff to work with the California Young Lawyers Association (CYLA), to review the work of CYLA and present a recommendation regarding the continued need for a formal Association at the Board's November 2016 meeting.**

Following the September 12, 2016, Board meeting, staff met by phone and in person with CYLA and its leadership. Based on these discussions, staff believes that the continued existence of CYLA is important, as it is the State Bar's primary vehicle for engaging young and new attorneys to ensure that they are properly prepared to meet their professional responsibilities. Revisions to the organization's focus are warranted, however, so that CYLA's general fund supported activities align squarely with the Bar's public protection mission. Although CYLA leadership expressed concerns regarding the modification or elimination of some of its previously planned 2017 activities, in general the group is receptive to a re-purposing that aligns the organization with the State Bar's public protection mandate.

Specifically, staff recommends that CYLA's 2017 areas of focus include the following:

Lawyers Assistance Program (LAP): CYLA will partner with LAP staff and the Oversight Committee to develop and implement an outreach and education initiative for law students and new lawyers. This effort will involve live programming at law schools and other venues, as well as the development of online education and outreach content, including through the modality of a new LAP app.

New Lawyer 10 Hour MCLE Requirement: CYLA will assist in the identification of appropriate topics for the new 10-hour MCLE requirement that will go into effect by February 1, 2018. CYLA will also assist in the development and testing of this web-based curriculum.

Staff also recommends that the Admissions and Education Committee review and approve an annual workplan for CYLA, beginning in November 2017, to ensure that, upon the conclusion of the 2017 activities outlined above, the Board continues to exercise appropriate oversight over the CYLA's initiatives.

7. External Appointments. Direct staff to review Board appointments to the following external entities, and the basis of those appointments, and to make recommendations regarding appointments that should be continued or discontinued at the Board's November 2016 meeting:

A. American Bar Association House of Delegates

Staff Report

The House of Delegates is the policy-making body of the ABA. The State Bar appoints a total of 11 delegates which constitute the California Delegation. They do not represent the State Bar, but are encouraged to broadly participate in ABA activities in order to fully represent the interests of all California attorneys. They are required to pay their own expenses.

Under the ABA Constitution, the California Delegation can have up to 31 delegates, although some positions are currently vacant. Aside from delegates appointed by the State Bar, delegates include those appointed by local bar associations, ABA sections and divisions, and former officers and ABA board members. If the State Bar discontinued its appointments, there would technically be 11 "vacancies" under the terms of the ABA Constitution, but the California Delegation could continue to function with up to 20 remaining delegates.

The State Bar delegates serve staggered two-year terms. In light of the overall structure of the ABA House of Delegates, and role of the State Bar appointees, staff recommends that existing terms be served, but that the State Bar discontinue any further appointments to the ABA House of Delegates. ABA staff was made aware of the potential change ultimately resulting in the elimination of State Bar appointments to the California delegation, and were appreciative of notification. If the Board adopts this recommendation, staff will advise the ABA of the Board's decision.

B. Law School Council

Staff Report

The Law School Council (Council) advises the Committee of Bar Examiners (CBE) on matters relating to the content and format of the bar examination and problems of coordinating curricula and all aspects of law school education relevant to the bar examination process. The Council

acts as a two-way channel of information and as a sounding board and source of expertise for the CBE for proposals from the CBE or from the law schools, and advises on such other matters as may be appropriate from time to time. The Council consists of 14 members. Ten are law school deans, who are elected by their category of school and also appointed by the Board of Trustees, three are from the CBE who have been appointed by the CBE Chair, and one is from the Board of Trustees (generally, the Chair of the Board Committee on Regulation and Discipline Oversight). The individual law schools assume the expenses for travel and per diem for the law school members of the Council. Under Business and Professions Code Section 6046.6(b), the CBE “shall communicate and cooperate with the Law School Council.” Given the statutory reference to the Council, staff recommends that the Board of Trustees continue making its appointments to that body.

C. Continuing Education of the Bar Governing Committee

Staff Report

The Continuing Education of the Bar (CEB) Governing Committee is a joint committee of the State Bar of California and the University of California. Board appointments to the Governing Committee are made pursuant to a 2001 Memorandum of Understanding between the State Bar and the Regents of the University of California which does not have an expiration date but can be terminated by either party upon 3 months written notice. Any changes would require a change to that Memorandum of Understanding. Staff recommends that this issue be studied further before taking any action, possibly using any MOU modification as an opportunity to explore enhanced MCLE efforts.

D. Legal Services Programs Governing Boards

Staff Report

Following the September 12, 2016, Board meeting, staff sought input from the five Legal Services Corporation funded legal services programs to which the Bar appoints board members. Staff learned that the State Bar’s appointments have value and that it would be challenging for the programs to lose the Bar’s support and assistance for the following reasons:

1. Federal regulations require that a majority of the members of these governing boards be “attorney members appointed by the governing body(ies) of one or more State, county or municipal bar associations, the membership of which represents a majority of attorneys practicing law in the localities in which the recipient provides legal assistance;”
2. Four of the organizations to which the Bar appoints are multi-county organizations (one serving all 58 counties) and it would be impractical and a significant hardship for them to work with multiple local bar associations for appointments;
3. State Bar appointments have greater gravitas than local bar appointments which allows organizations to attract stronger and more diverse candidates. State Bar appointments attract candidates from large law firms—something that can be difficult for rural programs to do on their own. These are important relationships for legal services organizations because they provide access to large firm resources and corporate support that help the organizations serve more clients; and

4. State Bar appointments to legal services organizations add value to the organizations and require limited staff or board time or resources.

Given the organizational impact on legal services organizations of losing State Bar appointees and the importance of these appointments to advance the Bar's access to justice priorities, staff recommends that the State Bar continue to appoint members to the boards of the five Legal Service Corporation funded legal services organizations.

FISCAL/PERSONNEL IMPACT

The fiscal impact of the proposed changes has not yet been determined. The budget implications of the proposed changes will be reflected in the 2017 budget, for presentation at the Board's January 2017 planning meeting.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

None at this time. After the various proposals have been finalized and approved by the Board of Trustees, existing policies and related Board Book provisions will be modified, as needed.

PROPOSED BOARD OF TRUSTEES RESOLUTION

RESOLVED, that the Board of Trustees directs staff, consistent with the discussion in this Agenda Item, to:

1. Continue pursuing the transition of the core functions of the following Standing Committees into the Litigation Section, with the goal of finalizing that transition by January 1, 2017: a) Committee on Administration of Justice; b) Committee on Alternative Dispute Resolution; c) Committee on Appellate Courts; and d) Committee on Federal Courts.
2. Continue pursuing the proposed integration of the Standing Committee on the Delivery of Legal Services (SCDLS) into the California Commission on Access to Justice (Access Commission), subject to the opportunity of the Access Commission to vet and approve the proposed integration prior to the Board taking official action, with the goal of finalizing a proposal by January 1, 2017.
3. If the proposed integration of SCDLS into the Access Commission is effectuated, present the Board with a formal proposal to increase the number of appointees to the Access Commission from 10 to 12, dedicating the two additional seats for staff from nonprofit legal services and pro bono organizations.
4. Work with the Stakeholders, Access to Justice, and Appointments Committee to study the potential combination of the Committee on Group Insurance Programs and Committee on Professional Liability Insurance, and report back to the Board no later than March 2017 with a proposal.

5. Work with the Stakeholders, Access to Justice, and Appointments Committee to effectuate a modification of the appointment process for the Advisory Commissions be modified so the California Board of Legal Specialization, rather than the Board of Trustees, makes appointments to the Advisory Commissions.
6. Work with the California Young Lawyers Association (CYLA) to re-purpose CYLA's areas of focus to include 1) partnering with Lawyers Assistance Program staff and the Oversight Committee to develop and implement an outreach and education initiative for law students and new lawyers; and 2) assisting in the identification of appropriate topics for the new 10-hour MCLE requirement that will go into effect by February 1, 2018 and in the development and testing of this web-based curriculum.
7. Work with CYLA to prepare an annual workplan for the Admissions and Education Committee to review and approve, beginning in November 2017, to ensure that, upon the conclusion of CYLA's 2017 activities, the Board continues to exercise appropriate oversight over the CYLA's initiatives; and it is
8. Work with the State Bar's Appointments Office to effectuate a revision to State Bar policy whereby current State Bar appointees to the ABA House of Delegates would serve their existing, but the State Bar will discontinue any further appointments to the ABA House of Delegates.