AGENDA ITEM

AUGUST 112

DATE:	**August 30, 2011**
TO:	**Members, Board Committee on Operations** **Members, Board of Governors**
FROM:	**Robert A. Hawley, Deputy Executive Director**
SUBJECT:	**Re-Organization Separation Plan**

EXECUTIVE SUMMARY

Executive Director Joseph Dunn is developing a structural reorganization of the State Bar. Contours of this plan have been shared with the Board on an information basis. The adverse impact of the reorganization on staff is still undetermined, except that it will be limited. Even so, it will facilitate the full implementation of the reorganization to be able to incentivize employees identified by management to voluntarily separate their employment with a separation package that is somewhat enhanced from that they would receive upon involuntary adverse action. The "enhancement" is intended to induce a voluntary separation governed by an agreement and complete release, eliminating layoff, "bumping," and other uncertainties associated with an involuntary adverse action. Employees currently are entitled to severance upon involuntary action as set forth below. What is presented here for Board consideration is the possibility of enhancing the existing severance entitlement to become a separation incentive, should it ultimately be needed to effectuate the reorganization. It is this enhancement that is before the Board for approval. If you have questions, please contact Robert Hawley at 415-538-2277, Robert.Hawley@calbar.ca.gov.

BACKGROUND/DISCUSSION

Executive Director Joseph Dunn is developing and intends to implement in the near future a structural reorganization of the State Bar. The impact of that reorganization on staff is still undetermined, but anticipated to be limited. Even so, it will facilitate the full implementation of the reorganization to be able to incentivize employees who are potentially affected to voluntarily separate their employment with a separation package that is slightly enhanced from that they would receive if confronted with involuntary adverse action.

Involuntary adverse employment actions invoke severance requirements under the State Bar's existing union negotiated Memorandum of Understanding (MOUs), Rules and Regulations Pertaining to the Employment of Executive Staff (Executive Staff Rules) and the Rules and Regulations Pertaining to the Employment of Confidential Employees (Confidential Employee Rules). Currently, union bargaining unit employees, depending on the adverse action they are facing, may receive a maximum 16 weeks severance pay under the Separation Plan Letter of Understanding that is a part of the MOUs. Confidential Employees likewise may receive a maximum 16 weeks severance pay under the Confidential Employee Rules. Executive Staff receive a maximum six months severance under the Executive Staff Rules. In each instance, severance pay is paid based upon years of service up to the stated maximum cap.

The proposal here is to authorize the State Bar to "enhance" the existing severance standards set forth above to a six-month maximum for all, based upon years of service up to that maximum. Executive Staff would not benefit from any enhancement. Non-Executive Staff would have the current 4 month severance maximum increased to six months, if they have the years of service to reach that maximum.

It is not the goal of the reorganization to reduce staff. The goal is to enhance performance. As the State Bar's new Executive Director seeks to change institutional culture, in part with a structural reorganization, it facilitates the effectuation of that effort to be able to incentivize employees to voluntarily separate their employment, particularly when they are affected by the reorganization. Under the MOU's, employees facing involuntarily adverse action have "bumping" rights that entitle them to retain employment and "bump" other less senior employees, displacing those employees who were not the target of the adverse action, creating organizational disruption that can be avoided with the voluntary program proposed here. The voluntary separation program is conditioned upon a full release of liability that is also of great value in such circumstances.

This program has been offered in the past with success. The program is generally announced and employees who are interested must apply for acceptance. If they are accepted, then they must sign a waiver and release in order to receive their severance benefits. If they are deemed operationally critical to the organization, or are not sufficiently affected by the reorganization, their application for the program is subject to rejection by management.

If the authority sought here is granted by the Board, discussions with the union representing bargaining unit employees on this subject will take place as required by law.

FISCAL / PERSONNEL IMPACT:

The fiscal impact of the separation plan is within current 2011 budget standards. It is fiscally prudent to do this in 2011 based on current budget projections. Payment of severance pay this year is covered by existing resources. The cost of the program is largely recouped in the future through the elimination and/or restructuring of positions so there is not a material adverse future budget impact once the cost of the severance payments is absorbed this year. The personnel impact is as noted above.

BOARD BOOK IMPACT:

None.

RECOMMENDATION & RESOLUTION:

If the Board Operations Committee and Board of Governors agree that the adoption of this enhancement to the separation/severance standard is appropriate, the following resolution should be adopted:

> **RESOLVED**, that upon the recommendation of the Board Operations Committee, the Board of Governors authorizes the Executive Director to implement a separation incentive plan, facilitating the Executive Director's institutional structural reorganization, offering qualified employees the opportunity to voluntarily separate employment from the State Bar of California with a separation severance payment not to exceed six months pay based upon formula and criteria to be determined by the Executive Director in consultation with the Office of Human Resources.