

AGENDA ITEM

142 March 2013

DATE: February 12, 2013

TO: Members, Board of Trustees
Members, Board Planning, Program Development and Budget Committee

FROM: Starr Babcock, General Counsel
Dina Goldman, Supervising Sr. Asst. General Counsel

SUBJECT: Governance Models and Officer Roles

EXECUTIVE SUMMARY

This item is a follow up to the Board's discussion of appropriate roles for State Bar officers at the January Planning Session. The item presents possible models for officer roles in light of recent statutory changes to State Bar Board governance under Cal. Stats. 2011, ch. 417 (Sen. Bill No. 163) (hereinafter, "SB 163"). The item also presents possible alternative models for the structure of the Board's standing committees. It is recommended that the Board adopt defined roles for the Vice-President and treasurer and also consider whether to alter the board committee structure.

BACKGROUND

Officers

Effective in 2012, SB 163 §§ 24, 25, amended California Business and Professions Code sections 6020-6021 to identify the State Bar's officers as a President, a Vice-President, a Treasurer and a Secretary. Section 6020 previously provided that the Bar's officers would be a President, four Vice-Presidents, a Secretary and a Treasurer. Under the new statutory provisions, the President, Vice-President and Treasurer are to be elected 90 days preceding the annual meeting from among all the members of the Board, assume their offices at the conclusion of the annual meeting, and serve a term of one year. The President may be elected to a second one-year term. The Secretary is not subject to election, may be a non-board member, and historically was an "Executive Secretary," with the duties of both Secretary and Executive Director, which today is the function of the State Bar's Executive Director/CEO.

Business and Professions Code § 6024, as amended by SB 163, describes the duties and functions of officers as follows:

"The president shall preside at all meetings of the State Bar and of the board, and in the event of his or her absence or inability to act, the vice-president shall preside.

Other duties of the president and the vice-president, and the duties of the secretary and the treasurer, shall be such as the board may prescribe."

Beyond the basic duties set forth in the statute for the President and Vice-President, the statute contemplates that the Board will define the role of these officers. The roles of the President and the Secretary have previously been defined by the Board. These definitions are attached as Attachment 1. The roles of the Vice-President and Treasurer should be similarly defined. Under the model of the multiple Vice-Presidents repealed by SB 163, the Board would “elect” by unanimous consent those board members who were in the third and final year of their terms on the Board to serve as Vice-Presidents. The duties of each of the Vice-Presidents were to chair and oversee the activities of one of the standing committees of the Board. The number of board committees was often dictated by the number of Vice-Presidents. Under SB 163, there is now a single elected Vice-President that currently has no specifically defined role or duties.

At the January Planning Session, the Board discussed multiple options with regard to defining officer roles. These options are presented below.

Committees

The current board committee structure has been in place since 2001, when the then Board of Governors established a governance structure comprised of five standing committees and a Board Operations Committee. The Audit Committee was added in 2004. The Board further directed that the standing committees could include the following, but should be differentiated with the understanding that the Board may continue to refine the structure as experience and need requires. With minor modifications and the addition of task forces, this structure has been maintained over the last eleven years:ⁱ

- (1) Board Operations Committee (composed of the President, the chairs of each standing committee, and the Executive Director/CEO)
- (2) Planning, Program Development, and Budget Committee (PPDB),
- (3) Regulation, Admission and Discipline Oversight Committee (RAD)
- (4) Member Oversight Committee (MOC)
- (5) Nominations and Appointments Committee (NAC)
- (6) Stakeholder Relations Committee/Legal Services Committee (Stakeholders)
- (7) Audit Committee (Audit)

At the time that it adopted this committee structure, the Board also considered a more streamlined structure that would have consisted of four committees: three board committees each assigned a different area of responsibility; and an executive or governance committee. The Board ultimately selected the structure with the larger number of committees, partially driven by the desire to provide a leadership opportunity for each third-year member of the Board.

The process for board committee appointments was last modified in 2010. The President-Elect appoints the standing committees of the Board of Trustees, including their chairs, after consultation with the outgoing Board Operations Committee, subject to the approval of the Board. The Board approves the appointments to the board committees at the annual organization meeting.

DISCUSSION

At the January Planning Session, the Board discussed several possible scenarios for officer roles. These proposals are summarized below.

Officer Roles

President.

Two proposals suggested streamlining the defined duties for the President to highlight the President's most significant roles. One proposal suggested reviewing the currently defined roles, editing out any redundant or duplicative language, and leaving only the most significant duties. The second proposal suggested keeping the current defined duties of the President intact, but also adding and highlighting these primary roles: 1) The President shall take responsibility for leading the Board and holding individual board members accountable to the Board as a whole for their contributions to the Board's leadership of the Bar; 2) The President shall be the Board's primary spokesperson to the Executive Director to facilitate communications between the Board and staff and to ensure the Executive Director and staff are accountable to the Board; and 3) The President shall be the primary spokesperson for the Board and the Bar in discussions with the Supreme Court, the Legislature, other stakeholders, wider audiences, and the general public.

Vice-President.

There were four proposals regarding the appropriate role for the Vice-President. One focused on defining the role of the office without adding the component that the Vice-President would automatically succeed to President and the remaining three all contained the recommendation that the Vice-President serve as President-Elect, but also provided varying suggested roles for the Vice-President to play with regard to board committees.

1. Defined Role—No Automatic Succession to President

One proposal suggested defining the role of the Vice-President as follows: 1) Serve as the Vice-Chair of Board Operations; 2) Be appointed by the President to serve as Chair or Vice Chair of RAD; 3) Serve as the Chair of the Annual Planning Retreat; 4) Serve the role and duties of the President when the President is absent; and 5) Serve in any other capacity as appointed by the President, including as Chair of a board committee, task force, or subcommittee.

2. President-Elect

Three additional proposals suggested that the description of the Vice-President's role include that the Vice-President will succeed to be the next President. A variation on this proposal is that the Vice-President will succeed to be the next President, unless he or she is unable to do so. One of these proposals also suggested that in addition to serving as President-Elect, the Vice-President should also automatically serve as Chair or as a member of RAD and have primary responsibility for ensuring the Board's attention to the performance of the Chief Trial Counsel, the State Bar Court, and other aspects of the Bar's disciplinary function.

Most of the members proposing that the Vice-President serve as President-Elect recommended that the Bar seek legislative authority to authorize an additional year of service for an incoming President whose term would otherwise end. This recommendation was made to give board members more time to evaluate the skills and experience of members who may

run for Vice-President and then have automatic succession to be President. Given that the President is eligible to be re-elected to a second term, this could result in the President serving 5 years on the Board. Another recommendation was to also seek legislative authority to authorize an additional year of service for an incoming Vice-President/President Elect whose term would otherwise end.

A statutory amendment to extend the term of an incoming President whose term would otherwise end would impact the board structure and election cycles created when SB 163 was passed. Prior to the passage of SB 163, Business and Professions Code section 6011 provided that the Board consisted of 22 members and a President. The goal of SB 163 was to reduce the overall size of the Board from 23 to 19 by 2014, and include the President within those 19 members. The legislation accomplished this by eliminating the 15 attorney-members elected from the nine pre-existing State Bar Districts, and repealing those districts. Instead, SB 163 provided that the Board would include (in addition to attorney and public members appointed by the Legislature and the Supreme Court) six elected attorney-members from new State Bar Districts with boundaries based on California's six districts for the courts of appeal, as they existed on December 31, 2011.¹ SB 163 provided that the process for the election of the attorney-members from the new districts was to be determined by the Board.² The Board amended its rules to set the procedure for these elections in December 2011, as follows:

- One member each from new State Bar Districts 4 and 5, based on court of appeal districts 4 and 5, beginning in 2012 and then every three years thereafter;
- One member each from new State Bar Districts 1 and 3, based on court of appeal districts 1 and 3, beginning in 2013 and then every three years thereafter; and
- One member each from new State Bar Districts 2 and 6, based on court of appeal districts 2 and 6, beginning in 2014 and then every three years thereafter.

A statutory amendment to add an additional year or two to the term of the President would have to address, for elected attorney members who become President, whether the President would continue to hold the seat for the district that elected him or her, or whether that seat would be vacated. If the President continued to hold his or her district seat, the extension of his or her term would skew the election sequence established by the Board. If the President did not continue to hold his or her district seat, this would have the effect of increasing the size of the Board from 19 to 20 members, which may not be consistent with the intent of the Legislature when it amended the statutes regarding the composition of the Board. A similar analysis would be required regarding the impact of extending the term of a Vice-President on the board structure and election cycles created when SB 163 was passed.

Treasurer.

There were two proposals regarding appropriate defined roles for the Treasurer.

The first proposal suggested defining the role of the Treasurer as follows: 1) Serve as the Chair of the Audit Committee; 2) Appointed by the President to serve either as Chair or Vice Chair of PPDB; and 3) Consult with the CFO and Budget Director and report to the Board regarding matters involving the budget and internal financial controls.

The second proposal also suggested that the Treasurer serve as chair or as a member of the Audit and PPDB committees. This proposal also suggested that the Treasurer take primary

¹ Cal. Bus. & Prof. Code § 6013.2.

² Cal. Bus. & Prof. Code § 6012(b).

responsibility for ensuring the Board's attention to the Bar's fiscal position, budget, audit reports, and stewardship of State Bar assets to ensure protection of the public at the lowest cost consistent with the Bar's mission. Lastly, this proposal suggested that the Treasurer serve in the absence of the President and Vice-President and assist them in fulfilling their primary responsibilities.

Committee Structure

At the January Planning Session, the Board deferred discussion of whether to implement any change to the structure of board standing committees. One proposal for the Board to consider is whether to reduce the number of board committees, similar to the proposal before the Board in 2001 when the current structure was adopted. That proposal was to have a total of four standing committees: three substantive committees and an executive or governance committee. This type of structure could be accomplished by combining some of the current committees with complementary areas of jurisdiction. One possibility would be to combine RAD and MOC into one committee, and Stakeholders and NAC into a second committee. This would result in a committee structure consisting of: an Executive Committee (Board Operations); a committee that included oversight over discipline, admissions, regulation and member oversight; PPDB; and a committee that included oversight of stakeholder issues as well as nominations and appointments. In addition, there would still be a separate Sections Task Force and Audit Committee.

In addition, one proposal made at the Planning Session suggested that it be made clear that the Executive Committee (Board Operations) is composed of the four officers and the chairs of the other board committees, but to ensure that it cannot have so many members that it would constitute a quorum of the Board.

FISCAL/PERSONNEL IMPACT:

None

RULE AMENDMENTS:

Rule 6.41(a)(b)

BOARD BOOK IMPACT:

TAB 5 Officers

TAB 9 Board Committees and Task Forces

RECOMMENDATION

It is recommended that the Board adopt one of the proposed resolutions regarding officer roles in order to provide defined roles for the Vice-President and Treasurer. It is further recommended that the Board consider whether to adopt a resolution changing the structure of the Board's committees.

PROPOSED BOARD COMMITTEE RESOLUTIONS:

Role of President:

Should the Board Committee on Planning, Program Development and Budget decide to recommend the addition of supplementary primary roles to the duties of the President, the following resolution would be appropriate:

RESOLVED, that the Board Committee on Planning, Program Development and Budget recommends that the Board of Trustees add the following primary roles to the duties of the President: 1) the President shall take responsibility for leading the Board and holding individual board members accountable to the Board as a whole for their contributions to the Board's leadership of the Bar; 2) the President shall be the Board's primary spokesperson to the Executive Director to facilitate communications between the Board and staff and to ensure the Executive Director and staff are accountable to the Board; and 3) the President shall be the primary spokesperson for the Board and the Bar in discussions with the Supreme Court, the Legislature, other stakeholders, wider audiences, and the general public.

Role of Vice-President:

First Proposed Resolution

Should the Board Committee on Planning, Program Development and Budget decide to recommend defining the role of the Vice-President without having the Vice-President serve as President-Elect, the following resolution would be appropriate:

RESOLVED, that the Board Committee on Planning, Program Development and Budget recommends that the Board of Trustees define the role of the Vice-President as follows:

The Vice-President of the State Bar will: 1) Serve as the Vice-Chair of Board Operations; 2) Be appointed by the President to serve as Chair or Vice Chair of RAD; 3) Serve as the Chair of the Annual Planning Retreat; 4) Serve the role and duties of the President when the President is absent; and 5) Serve in any other capacity as appointed by the President, including as Chair of a board committee, task force, or subcommittee.

Second Proposed Resolution

Should the Board Committee on Planning, Program Development and Budget decide to recommend defining the role of the Vice-President to include having the Vice-President serve as President-Elect, along with additional defined duties, the following resolution would be appropriate:

RESOLVED, that the Board Committee on Planning, Program Development and Budget recommends that the Board of Trustees define the role of the Vice-President as follows:

The Vice President of the State Bar will: 1) Automatically succeed to be the next President of the State Bar; 2) Automatically serve as Chair of RAD; and 3) Have primary responsibility for ensuring the Board's attention to the performance of the Chief Trial Counsel, the State Bar Court, and other aspects of the Bar's disciplinary function.

And if the Board Committee on Planning Program Development and Budget also decides to recommend that staff pursue a legislative amendment to extend the term of the President when necessary, the following resolution would be appropriate:

AND IT IS FURTHER RESOLVED, that the Board Committee on Planning, Program Development and Budget recommends that the Board of Trustees direct staff to pursue a legislative amendment that would authorize an additional year of service for an incoming President whose term would otherwise end.

Role of Treasurer:

First Proposed Resolution

Should the Board Committee on Planning, Program Development and Budget decide to recommend defining the role of the Treasurer in accordance with the first proposal summarized above, the following resolution would be appropriate:

RESOLVED, that the Board Committee on Planning, Program Development and Budget recommends that the Board of Trustees define the role of the Treasurer as follows:

The Treasurer of the State Bar will: 1) Serve as the Chair of the Audit Committee; 2) Be appointed by the President to serve either as Chair or Vice Chair of PPDB; and 3) Consult with the CFO and Budget Director and report to the Board regarding matters involving the budget and internal financial controls.

Second Proposed Resolution

Should the Board Committee on Planning, Program Development and Budget decide to recommend defining the role of the Treasurer in accordance with the second proposal summarized above, the following resolution would be appropriate:

RESOLVED, that the Board Committee on Planning, Program Development and Budget recommends that the Board of Trustees define the role of the Treasurer as follows:

The Treasurer of the State Bar will: 1) Serve as chair of the Audit and PPDB committees; 2) Take primary responsibility for ensuring the Board's attention to the Bar's fiscal position, budget, audit reports, and stewardship of Bar assets to ensure protection of the public at the lowest cost consistent with the Bar's mission; and 3) Serve in the absence of the President and Vice-President and assist them in fulfilling their primary responsibilities.

PROPOSED BOARD RESOLUTIONS:

Role of President:

Should the of Trustees agree with the Board Committee on Planning, Program Development and Budget's recommendation to add supplementary primary roles to the duties of the President, the following resolution would be appropriate:

RESOLVED, that upon the recommendation of the Board Committee on Planning, Program Development and Budget, the Board of Trustees hereby adds the following primary roles to the duties of the President: 1) the President shall take responsibility for leading the Board and holding individual Board members accountable to the Board as a whole for their contributions to the Board's leadership of the Bar; 2) the President shall be the Board's primary spokesperson to the Executive Director to facilitate communications between the Board and staff and to ensure the Executive Director and staff are accountable to the Board; and 3) the President shall be the primary spokesperson for the Board and the Bar in discussions with the Supreme Court, the Legislature, other stakeholders, wider audiences, and the general public.

Role of Vice-President:

First Proposed Resolution

Should the Board of Trustees agree with the Board Committee on Planning, Program Development and Budget's recommendation to define the role of the Vice-President without having the Vice-President serve as President-Elect, the following resolution would be appropriate:

RESOLVED, that upon the recommendation of the Board Committee on Planning, Program Development and Budget, the Board of Trustees hereby defines the role of the Vice-President as follows:

The Vice-President of the State Bar's duties are as follows: 1) Serve as the Vice Chair of Board Operations; 2) Be appointed by the President to serve as Chair or Vice Chair of RAD; 3) Serve as the Chair of the Annual Planning Retreat; 4) Serve the role and duties of the President when the President is absent; and 5) Serve in any other capacity as appointed by the President, including as Chair of a board committee, task force, or subcommittee.

Second Proposed Resolution

Should the Board of Trustees agree with the Board Committee on Planning, Program Development and Budget's recommendation to define the role of the Vice-President to include having the Vice-President serve as President-Elect, with additional defined duties, the following resolution would be appropriate:

RESOLVED, that upon the recommendation of the Board Committee on Planning, Program Development and Budget, the Board of Trustees hereby defines the role of the Vice-President as follows:

The Vice-President of the State Bar will: 1) Automatically succeed to be the next President of the State Bar; 2) Automatically serve as Chair of RAD; and 3) Have primary responsibility for ensuring the Board's attention to the performance of the Chief Trial Counsel, the State Bar Court, and other aspects of the Bar's disciplinary function.

And if the Board also agrees with the Board Committee on Planning, Program Development and Budget's recommendation to direct staff to pursue a legislative amendment to extend the term of the President when necessary, the following resolution would be appropriate:

AND IT IS FURTHER RESOLVED, that upon the recommendation of the Board Committee on Planning, Program Development and Budget the Board of Trustees hereby directs staff to pursue a legislative amendment that would authorize an additional year of service for an incoming President whose term would otherwise end.

Role of Treasurer:

First Proposed Resolution

Should the Board of Trustees agree with Board Committee on Planning, Program Development and Budget's recommendation to define the role of the Treasurer in accordance with the first proposal summarized above, the following resolution would be appropriate:

RESOLVED, that upon the recommendation of the Board Committee on Planning, Program Development and Budget, the Board of Trustees hereby defines the role of the Treasurer as follows:

The Treasurer of the State Bar will: 1) Serve as the Chair of the Audit Committee; 2) Be appointed by the President to serve either as Chair or Vice Chair of PPDB; and 3) Consult with the CFO and Budget Director and report to the Board regarding matters involving the budget and internal financial controls.

Second Proposed Resolution

Should the Board of Trustees agree with the Board Committee on Planning, Program Development and Budget's recommendation to define the role of the Treasurer in accordance with the second proposal summarized above, the following resolution would be appropriate:

RESOLVED, that upon the recommendation of the Board Committee on Planning, Program Development and Budget, the Board of Trustees hereby defines the role of the Treasurer as follows:

The Treasurer of the State Bar will: 1) Serve as chair of the Audit and PPDB committees; 2) Take primary responsibility for ensuring the Board's attention to the Bar's fiscal position, budget, audit reports, and stewardship of Bar assets to ensure protection of the public at the lowest cost consistent with the Bar's mission; and 3) Serve in the absence of the President and Vice-President and assist them in fulfilling their primary responsibilities.

¹ Source: Annual Organization Board of Governors' Resolution; Board of Governors' Resolution, October, 2001 Action Plan/Report; Board of Governors' Resolutions September 2004, July 2009, May 2010.

Historical Note

In 2001, the Board of Governors established a board committee structure comprised of five standing committees and a Board Operations Committee (BOPS). The Board further directed that the standing committees could include the following, with the understanding that the Board may continue to refine the structure as experience and need requires: (1) Planning, Program Development, and Budget (PPDB) Committee, (2) Member Oversight Committee (MOC), (3) Regulation, Admission and Discipline Oversight Committee (RAD), (4) Stakeholder Relations Committee (SRC)/Legal Services Committee, (5) Volunteer Involvement Committee (VIC).

- 2002 - 2003, the Board added a Task Force on Sections.
- 2004 - 2005, SRC and VIC were combined to create the Communications and Bar Relations Committee (COMBAR). BOPS, RAD, MOC, PPDB and Task Force on Sections were maintained.
- In 2004, the Board added an independent State Bar Audit Committee.
- During 2005 – 2006, the Board went back to the six-committee governance structure adopted in 2001 with the addition of the Task Force on Sections and Audit Committees.
- 2009 – 2010, VIC and MOC were combined to form a Member Involvement Relations & Services committee (MIRS). RAD was split into two committees, Discipline Oversight Committee (DOC) and Regulation and Admissions Committee (RAC). SRC was eliminated and replaced with the

Legal Services, Pro Bono & Equal Access Committee. BOPS, PPDB, Sections Task Force and Audit Committees were maintained.

- 2010 – 2011, the Board returned to the six-committee structure adopted in 2001, maintaining the Task Force on Sections and Audit Committees.
- 2011-2012, the Board changed the name of the Volunteer Involvement Committee (VIC) to Nominations and Appointment Committee (NAC) because in recent years, the central mission of the VIC -- and the bulk of its work -- has been nominations and appointments; created a Task Force on Discipline Metrics and Monitoring and an Ad Hoc Legislative Affairs Committee.