

Board Committee on Operations Referral List

March 6, 2013

Category 1 – Change in Date Only

March #1

Annual Report on Outreach by the Council on Access and Fairness (COAF).

This report initially was scheduled for NAC's March meeting. With the change in date and location of the March meeting, COAF's presenters may not be available to travel to Sacramento and the committee requests that it present its report to NAC at the May meeting in San Francisco.

Responsible Staff: Patricia Lee

Recommendation: NAC: ~~March~~ **May**

BOT: N/A

March #2

Proposed changes to MCLE Requirements

The Board discussed raising the bar for lawyer education its 2012 Board Planning Meeting. The discussion includes potentially raising the number of required hours of MCLE per compliance period, increasing the number of required hours of ethics education and law practice management as a mandatory MCLE subject. This is a request to conduct public hearings in order to formulate a proposal that will be presented to MOC at the July meeting and then released for public comment.

Responsible Staff: Bob Hawley/Pam Wilson

Recommendation: MOC: ~~2012 March~~ **March /July/TBD**

BOT: TBD

March #3

Standards for Attorney Sanctions for Professional Misconduct, Proposed Modifications

The Standards for Attorney Sanctions will be evaluated, and if needed, updated. This item needs more staff time to fully develop.

Responsible Staff: Starr Babcock

Recommendation: RAD: Nov/Dec/~~Mar~~ **May/July**

BOT: ~~March~~ **July**

March #4

Proposed Amendment to Accredited Law School Rules re Equal Opportunity and Non-Discrimination Standard

This item was scheduled to return to RAD and the Board after public comment. However due to timing issues, the Committee of Bar Examiners hasn't considered the public comment received on this proposal yet, but it will be considered at their next meeting.

Responsible Staff: Gayle Murphy

Recommendation: RAD: Nov/~~Mar~~/May

BOT: ~~Mar~~/May

Category 2 – Possible Committee Reassignments

None

Category 3 – New Matters Requiring Assignment to Appropriate Board Committee

March #5

Committee on Professional Liability Insurance—Interim Appointment of Officer

The co-chair of this committee resigned in October due to a conflict. The committee recently nominated another member for the position and requests the Board consider this matter at the March meeting.

Responsible Staff: Raquel Hines, Pam Wilson

Recommendation: NAC: **March**

BOT: **March**

March #6

Criminal Law Section Executive Committee—Interim Appointment of Member

This executive committee has a new vacancy due to recent resignation and requests the vacancy be filled at the Board's March meeting.

Responsible Staff: Pam Wilson

Recommendation: NAC: **March**

BOT: **March**

March #7

Proposed State Bar Sponsored Health Care Program Administrator

The Committee on Group Insurance Programs (COGIP) requests Board approval to 1) establish a State Bar sponsored Health Care Program to assist members residing throughout California to secure comprehensive and cost effective health insurance coverage and 2) delegate authority to COGIP to select Health Care Program Administrators to coordinate and administer these programs directly with the members. COGIP will monitor the benefits and services provided by the Program Administrators.

Responsible Staff: Pam Wilson

Recommendation: MOC: **March**

BOT: **March**

March #8

Request to Change State Bar Rule 3.54 (A) – Sections of the State Bar, Executive Committee, Number of Members

This request to change State Bar Rule 3.54 pertaining to the number of members that constitute a Section Executive Committee will be considered by the Nominations and Appointments Committee as the rule directly affects the appointment process. Additionally, one of 2012-2013 NAC goals is review of the general appointment policies with the size of committees being part of that discussion. Currently, a section must have an executive committee of at least fifteen members appointed by the Board of Trustees. An additional two members are permitted for the purpose of service as an officer for a total of 17 members. The requested change is to allow a Section Executive Committee to have a total membership of 17 regardless of the number of officers. This change would require public comment. This will also go to the Member Oversight Committee for information purposes.

Responsible Staff: Pam Wilson

Recommendation: NAC: **May/July** MOC: **May (INFO only)** BOT: **July**

March #9

Proposed Amendment to Rules of Procedure of the State Bar, rule 5.41, Authorizing “Notice Pleading” in Notice of Disciplinary Charges

The Office of the Chief Trial Counsel seeks to amend the rules of procedure by adding language which clarifies that rule 5.41 permits notice pleading for alleging professional misconduct against a member in State Bar disciplinary proceedings. Notice pleadings shall provide reasonable notice of the allegations and otherwise comply with the Rules of Procedure of the State Bar of California.

Responsible Staff: Jayne Kim

Recommendation: RAD: **March/July**

BOT: **July**

March #10

Modification of Board Policy Regarding Posting of Documents in State Bar Disciplinary and Regulatory Proceedings

The Office of the Chief Trial Counsel seeks to amend Board policy regarding the posting of Notices of Disciplinary Charges (NDCs) and the posting of documents related to reinstatement proceedings. The current policy states that NDCs are to be posted online when: a) the respondent attorney files a response or b) the time frame for the attorney to file said response has expired. This proposal would amend the policy to allow the posting of NDCs to occur immediately upon filing. In addition, it is the current policy that initiating documents in disciplinary matters are posted on the State Bar's website. The proposal would further amend that policy to include the posting of petitions for reinstatement and responses to the petitions, which are filed in the State Bar Court. These petitions are considered regulatory, not disciplinary, in nature and fall outside of the current policy

Responsible Staff: Jayne Kim

Recommendation: RAD: **March**

BOT: March

March #11

Task Force on Admissions Regulation Reform: Phase I Proposals for a Practical Skills Training Requirement - Request to send out for public comment

Recommendations from the State Bar's Task Force on Admissions Regulation Reform for pre- and post-admission practical skills training requirements for new admittees will be presented. It is requested that the recommendations be released for public comment and subsequent adoption by the Board of Trustees.

Responsible Staff: Joseph Dunn

Recommendation: RAD: **March/TBD**

BOT: TBD

March #12

Suspension For Failure To Comply With Child Or Family Support Order

Proposed amendments to Rule of Court 9.22 and State Bar rule 2.34, which govern the State Bar's process for suspension of members who fail to comply with a child or family support order, were approved by the Board in July 2012 and submitted to the Supreme Court for consideration. It now appears that the Court would prefer some revisions in the proposal. If a 30-day Public Comment Period is approved by RAD in May, the proposal will return to RAD/BOT for approval in July, and the revised proposal will be transmitted to the Court soon thereafter.

Responsible Staff: Dina DiLoreto, Mary Yen

Recommendation: RAD: **May/July**

BOT: July

March #13

Refusal-of-Admission and Suspension for Tax Delinquency (AB 1424, Stats. 2011, Ch. 455)

AB 1424 is legislation providing for refusal-of-admission and suspension of licensed professionals, including attorneys, who are on a certified list of the Franchise Tax Board or a certified list of the Board of Equalization as being the state's top 500 delinquent tax payers. The statute providing for refusal-of-admission and suspension became effective July 1, 2012. In July 2012 the BOT approved proposed new rules of court and proposed additions/amendments of related State Bar rules. The proposed rules of court were transmitted to the Supreme Court for consideration. It now appears that the Court would prefer some revisions in the proposal. If a 30-day Public Comment Period is approved by RAD in May, the proposal will return to RAD/BOT for approval in July, and the revised proposal will be transmitted to the Court soon thereafter.

Responsible Staff: Gayle Murphy, Dina DiLoreto, Mary Yen

Recommendation: RAD: **May/July**

BOT: July

March #14

Potential Legislative and Other Action—Hosting International Arbitrations in California

This referral is to allow consideration of potential legislation and other vehicles to allow "foreign" attorneys to represent parties in international commercial arbitrations in California. In 1988, the Legislature enacted a comprehensive international arbitration and conciliation statute based on the UNCITRAL Model Law on International Arbitration, positioning California to become a major center for international arbitration. [See, Cal. Code Civ. Proc. § 1297.11 et seq.] Before this happened, the California Supreme Court held that that an attorney's participation in an arbitration constitutes the "practice of law," which under California Business and Professions Code § 6125 is restricted to active members of the State Bar of California. [See, *Birbrower, Montalbano, Condon & Frank v. Superior Court*, 17 Cal. 4th 119 (1998).] In response, the Legislature crafted Business and Professions Code Section 1282.4 to allow out-of-state (but not "foreign") attorneys to participate in California arbitration proceedings, if they register in a pro hac vice-like manner. In 2004, the Supreme Court adopted, amended and updated multi-jurisdiction practice rules that provide various ways for out-of-state (but not "foreign") lawyers to be specially admitted in California. [See, California Rules of Court 9.40 et seq.] Since then, the American Bar Association, the Conference of Chief Justices and other states have moved toward allowing qualified foreign lawyers limited access to the practice of law in U.S. states. Consistent with this, it is time for the State Bar to examine and consider action limited here to addressing the presence in the state of foreign counsel representing parties in international arbitrations.

Responsible Staff: Robert Hawley, Joseph Dunn

Recommendation: Stakeholders: **May**

BOT: May