

# AGENDA ITEM

702 OCT 13

**DATE:** October 13, 2013

**TO:** Members, Board of Trustees

**FROM:** Starr Babcock, General Counsel/Chief Legal Officer  
Office of General Counsel

**SUBJECT:** Authorize Creation of Special Committee to Review Current Discipline Standards

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## EXECUTIVE SUMMARY

Subject to the Board of Trustees' adoption of Agenda Item 113 OCT 13 [proposed updates to the Standards for Attorney Sanctions for Professional Misconduct ("Standards") which include a general clean up, re-organization, and streamlining of the Standards], staff seeks the Board's authorization to create a special committee to study whether the Standards are in need of a more comprehensive overhaul.

## BACKGROUND

At the Board of Trustees' July 18-19, 2013 meeting, the Committee on Regulation, Admission and Discipline Oversight authorized a 60-day comment period to circulate the proposed revisions to the Standards for public input. The proposed revisions included general updates and stylistic revisions to the Standards, including rewriting them in plain English, reorganizing them for better flow and comprehension, and substantively modifying them in certain places to better reflect current case law, rule, and statutory authority.

The 60-day period expired on September 23, 2013, and two comments were received and presented to the Board Committee on Operations at its October 12, 2013 meeting. (See Agenda Item 113 OCT 13.) Both commenters, the Los Angeles County Bar Association Professional Responsibility and Ethics Committee ("PREC") and the State Bar's Office of the Chief Trial Counsel ("OCTC") indicated that the proposed Standards were an improvement over the existing Standards and recommended their adoption.

In its comment, OCTC expressed its belief that the proposed Standards are a starting point however, and urged that the State Bar undertake a more comprehensive overhaul of the Standards, including the creation of narrowly tailored disciplinary sanctions similar to sentencing guidelines. This approach is a conceptual departure from existing State Bar Court practice, California Supreme Court precedent, Standards that exist in other

jurisdictions, and the ABA Standards. In order to better evaluate and explore OCTC's proposal, it is recommended that the Board of Trustees authorize the creation of a special committee to study the Standards.

## **DISCUSSION**

Authorization of any Ad Hoc Committee must be based upon a written charge setting forth the tasks to be carried out, and must not include any task that is expressly delegated by the Board Book to any standing committee or to the Board as a whole. Board Book at Tab 9, Article 1, Section 3 (b) (2). The proposed charge of this special committee, which is not currently charged to any standing committee or to the Board, is as follows:

### **CHARGE OF THE IMPLEMENTATION COMMITTEE**

To study and review the Standards for Attorney Sanctions for Professional Misconduct, as modified and adopted by the Board of Trustees effective January 1, 2014, to see what, if any, additional modification are desired or warranted.

Develop a timeline and presentation of any final recommendations to the Board Committee on Regulation, Admissions and Discipline Oversight and the Board of Trustees.

### **FISCAL / PERSONNEL IMPACT:**

Staff time and meetings will result in some fiscal impact, the amount of which is unknown at this time.

### **RULE AMENDMENTS:**

The Rules of Procedure of the State Bar of California, Title IV. "Standards for Attorney Sanctions for Professional Misconduct" would need to be amended if any proposed recommendations from the Committee are ultimately adopted by the Board.

### **BOARD BOOK IMPACT:**

No Board Book impact is foreseen.

## **RECOMMENDATION**

It is recommended that the Board of Trustees approve the creation of a special committee to study the Standards.

## **PROPOSED BOARD OF TRUSTEES RESOLUTION:**

Should the Board of Trustees concur with the above recommendation, the following resolutions would be in order:

**RESOLVED**, that the Board of Trustees hereby approves the creation of a special committee to study the Standards; and it is

**FURTHER RESOLVED**, that President Rodriguez present proposed committee appointments for the new committee to the Board of Trustees at its November 15, 2013 meeting.