

AGENDA ITEM

704 December 19 2014

DATE: December 19, 2014

TO: Members, Board of Trustees

FROM: Robert A. Hawley, Deputy & Acting Executive Director

SUBJECT: Commission to Evaluate and Recommend Improvements to the State Bar

EXECUTIVE SUMMARY

As voices call for further reform of the State Bar as an entity, this is presented for discussion at the December 19, 2014 meeting of the Board of Trustees on the potential creation and appointment of a special commission to evaluate and recommend improvements to the State Bar of California. This is reminiscent of the process that took place between 1993 and 1995 when a special commission undertook a review on the future of the legal profession and the State Bar of California and rendered an extensive report. The anticipated focus here is much narrower, but still reminiscent of the “Futures” project. We provide information on the 1993-95 “Futures” project for context.

BACKGROUND

In 1992, the California Legislature passed AB-687, which established a 21 member task force to study alternatives to what was then the current structure of the State Bar of California. The original version of this bill, before amendment, was introduced by then Speaker of the Assembly Willie Brown and sought to abolish the State Bar of California entirely. The Governor ultimately vetoed the amended study bill, expressing concern that the contemplated task force did not include representation from the Executive Branch, and suggested that a broader study scope and commission representation than that contemplated by the bill was warranted. Thus, the effort to abolish the State Bar and “legislate” alternatives to it came to an end, and evolved into the “Futures” study.

In recognition of the Legislative and Executive Branch interest in the State Bar of California, the then Board of Governors created a special Commission on the Future of the Legal Profession and the State Bar. Thirty members were appointed to serve including 18 members appointed by the President of the State Bar, 6 members appointed by the Governor, 3 members appointed by the Speaker of the Assembly, and 3 members appointed by the President Pro Tem of the Senate. [Attachment 1]. In addition, a number of organizations appointed official liaisons to the Commission, who regularly attended meetings and participated as non-voting members.

The work of the Commission was divided into 6 study focus groups: 1) Public Protection: Discipline, Admissions and Competence; 2) Services to the Public; 3) Decline in Attorney Professionalism; 4) Lawyers and the Justice System; 5) Services to and for Lawyers; 6) Future Structure of the Bar.

In April 1995, the Futures Commission issued an extensive report that included a total of 94 recommendations over the 6 identified study areas. We include for your reference here those 94 recommendations. [Attachment 2]. Many of which were implemented, some of which have become antiquated and no longer relevant, and some of which continue to resonate in today's environment.

Of the study subjects, the Structure and Organization of the State Bar appears to be most relevant to the current discussion. As a result, we attach the Futures Report excerpt on that subject. [Attachment 3]. The discussion then, which continues to some extent now, is whether the "unified bar" continues to serve the public interest and the profession effectively. On a split vote (13 to 8), with a minority report [Attachment 4], the unified bar prevailed. The focus of the Future Commission's study of the unified bar at that time, was on the unified bar's apparent insensitivity to the attorney membership of the State Bar. It would appear that the focus currently has reversed so that the concern now raised about the structure of the organization is whether it effectively protects the public interest as opposed to serving its membership base. [See, e.g., Business and Professions Code Section 6001.1 (State Bar—Protection of the Public as the Highest Priority)].

Following are potential discussion points for the Board to consider should it wish to explore the creation of a commission to study the functionality of the State Bar including its unified status.

CREATING AUTHORITY

Who creates the commission? The State Bar Board of Trustees, the Legislature, the Supreme Court?

APPOINTING AUTHORITY

Who appoints the members of the commission. What types of members are sought? Several possibilities exist as to the appointing authorities for such a commission. The Board of Trustees could create and appoint the commission all itself. However, this would raise issues of credibility and self-serving-ness. The Supreme Court could create the commission and appoint the members. The Legislature could do so. The commission could be created by any of these authorities with the appointing authorities having designated member slots to fill. The appointing authorities would likely be the Supreme Court, the two Legislative Houses, the Governor, and the Board of Trustees.

MEMBERSHIP

The number of commissioners should be less than the 30 appointed in the 1990's . Perhaps 9 to 12 members. Membership could be mandated to include judges, lawyers, non-lawyers, academics, legislators, any number of others that may be identified. Wide-ranging diversity should be sought in geographic location, legal experience, socio-economic background, experience with the State Bar, among other factors.

MISSION STATEMENT

The mission of the commission should be to study and review the functionality of the State Bar as it currently functions as a "unified bar." This could include the board and governance issues that have previously been under consideration through the AB-163 process as well as management, staffing, controls, funding, any other issues of particular focus. The mission statement from the 1995 report is included. [Attachment 5].

The report from the 1995 Futures Commission on the Bar Structure and Organization includes an extensive history of the unified bar both in California as well as in the United States. It sets forth the criticisms and benefits of the unified bar, which have not changed materially from those articulated in 1995.

CONCLUSION

This is contemplated as a discussion piece. It is hoped that it provides you with the necessary structure and background to begin a discussion on the viability and meaningfulness of a commission study such as that list above.