

AGENDA ITEM

705 JANUARY 2016

DATE: January 19, 2016

TO: Members, Regulation and Discipline Committee
Members, Board of Trustees

FROM: Leah Wilson, Chief Operating Officer

SUBJECT: RAD Charter Amendments Reflecting Responsibility for Overview and Approval of the Annual Discipline Report

EXECUTIVE SUMMARY

As required by Business and Professions Code section 6145(b), the California State Auditor conducted a performance audit of the State Bar of California and released its report in June. The report contains a recommendation that in order to assure the Legislature and the public that the data in the State Bar's discipline reports are accurate, the Board should implement controls over the accuracy, consistency, and sufficiency of the data gathered and methods used to compute the information included in the report, and that the Board should expand the role of an existing Board committee—such as the Regulation and Discipline Committee—to include a review of the discipline report and the underlying discipline statistics.

The proposed charter amendments effectuate the State Auditor's recommendation, by expressly adding oversight of the Annual Discipline Report process and underlying discipline statistics to the mandate of the Regulation and Discipline Committee.

BACKGROUND

State law requires the State Bar to prepare an Annual Discipline Report, a public document that it must present to the governor, the chief justice, and the Legislature to assist them in evaluating the performance of its attorney discipline system (Business and Professions Code section 6086.15).

In its June 2015 report the Auditor noted that the State Bar limited the ability of stakeholders to use its discipline reports to assess the discipline system because it has changed the methodology it employs and has not established adequate controls to verify the reports' reliability. Further, the Auditor found that although the Board of Trustees approved a resolution in 2014 specifying the types of information that the State Bar should include in the discipline reports, it had not taken sufficient steps to ensure that they contain accurate and complete information. The Auditor also noted that the Board does not review the discipline report before it is submitted to the Legislature and that the State Bar has no policy or procedure that dictates how it will compile or review the discipline reports.

The State Auditor made the following recommendation regarding the Annual Discipline Report in its 2015 report:

To assure the Legislature and the public that the data in the State Bar's discipline reports are accurate, the Board should implement controls over the accuracy, consistency, and sufficiency of the data gathered and methods used to compute the information included in the report. For example, the Board could expand the role of an existing Board committee - such as the Regulation and Discipline committee - to include a review of the discipline report and the underlying discipline statistics. (page 41)

DISCUSSION

To address the State Auditor's recommendation, staff recommends adding oversight of the Annual Discipline Report process and underlying discipline statistics to the charter of the Regulation and Discipline Committee.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

N/A

BOARD BOOK IMPACT

Tab 9, Article 4.

BOARD COMMITTEE RECOMMENDATIONS

The Regulation and Discipline Committee recommends that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees adopts the following amendment to the Charter of the Regulation and Discipline Committee and directs staff to update the Board Book accordingly:

CHARTER FOR REGULATION AND DISCIPLINE COMMITTEE

The Regulation and Discipline Committee is a performance-monitoring committee without planning responsibilities. It is accountable for monitoring the operational and financial performance of the State Bar's Regulation and Discipline functions such as monitoring the work of the Client Security Fund Administration, the State Bar Court, Discipline Enforcement, and Mandatory Fee Arbitration. The Regulation and Discipline Committee is accountable for the following functions in the area of Regulation and Discipline:

- Establish the key elements of a programmatic and financial reporting process, including the content, format, and frequency of performance reports to the Board, and overseeing implementation of the process.
- Oversee (as provided by statute: Bus. & Prof. Section 6079.5), the work of the Chief Trial Counsel, who reports to and serves under this Board committee.
- Approve any material changes to policy-level quality-control measures that apply to the Office of Chief Trial Counsel, the Client Security Fund, or the Office of Probation.
- Review performance reports in committee meetings and report program and financial performance to the full Board.
- Identify needed corrective actions in ongoing programs and functions that do not require revision in approved program and functional goals or changes in the approved budget, and overseeing the implementation of such actions.
- Oversee the development and implementation of State Bar operational policies as needed to guide programs and functions dealing with Regulation and Discipline, so long as these policies do not alter approved goals or result in changes in the adopted budget.
- Oversee the preparation of in-depth assessments of program/function effectiveness for presentation at the annual strategic work session.
- Present an overall assessment of the past year's fiscal and program performance at the annual strategic work session.
- Review internal and external audit reports as they relate to the Regulation and Discipline functions of the Bar and overseeing corrective actions.
- **Oversee the Annual Discipline Report process and underlying discipline statistics.**

ⁱ California State Auditor Report 2015-030, State Bar of California, It Has Not Consistently Protected the Public Through its Attorney Discipline Process and Lacks Accountability