

AGENDA ITEM

712 SEPTEMBER 2016

DATE: September 12, 2016

TO: Members, Board of Trustees

FROM: Elizabeth Rindskopf Parker, Executive Director

SUBJECT: State Bar Policy on the Payment for Alcohol at State Bar Events

EXECUTIVE SUMMARY

Beginning in 2016, State Bar spending on alcohol has been limited to State Bar Sections Events. The Sections have paid for any alcohol through external sponsorships and non-dues revenue (such as ticketed event or online education revenue). The Executive leadership of the State Bar proposes two changes to the State Bar's current alcohol expense policy. First, effective immediately, no Bar funds, other than those provided by external sponsors or non-section member dues, may be used for alcohol purchases. Second, effective January 1, 2017, any State Bar spending on alcohol is prohibited, irrespective of the funding source.

BACKGROUND

The State Bar's 2016 Travel & Expense Policy provides that expenditures for alcoholic beverages and corkage fees are allowable in very limited circumstances, requiring pre-approval by the Chief Operating Officer or Executive Director.

Beginning in 2016, spending on alcohol has been limited to State Bar Sections ("Sections") events. Importantly, no member fees or dues (mandatory member fees or Section member dues) are used to pay for alcohol. Instead, the Sections use two primary sources of funding to cover the cost of alcohol. The first source is non-section member dues revenue, which derives primarily from online continuing legal education fees or ticketed Sections' events. The second source is sponsorship money. Law firms are the most common sponsors of Sections events; accounting firms, litigation services companies, and some corporations are also event sponsors.

The State Bar, on behalf of the Sections, contracts directly with the event venues and therefore is the payor for alcohol-related expenditures, even though non-section member dues revenue covers the cost of alcohol. Internal expense coding ensures the source of payment for alcohol is charged to non-section member dues revenue. In this way, the Bar acts as a conduit; it collects the sponsorship fees (or other non-dues revenue) and pays the vendor using those funds.

Audit findings presented to the Board's Audit Committee this year identified significant sums of money spent on alcohol in 2015, generating a request from that Committee for a Board of

Trustees policy governing alcohol-related expenditures; focus on alcohol-related spending has continued since that time with respect to key stakeholders, including the Legislature. Given the Bar's appropriately increasing focus on its core public protection mission and responsibilities, staff recommends that the Board of Trustees adopt an alcohol policy as outlined below.

RECOMMENDATION

Staff recommends that the Board adopt the following policies:

1. Effective immediately, no State Bar funds, other than those provided by external sponsors or non-section member dues revenue, may be used for alcohol purchases; and,
2. Effective January 1, 2017, any State Bar spending on alcohol is prohibited, irrespective of the funding source, including external sponsorship.

DISCUSSION AND IMPACT

This proposed policy was shared conceptually with the Council of State Bar Sections at its September 8, 2016, meeting. At that meeting a number of concerns were raised regarding events already planned for 2016, as well as the broader implications of the elimination of sponsored (and thus free) alcohol at Section networking events. This discussion was further animated by recent staff decisions to cancel pending contracts for certain types of entertainment planned for upcoming Section events, and a concern that sponsorship broadly, beyond simply as related to alcohol, was in jeopardy. Lastly, and related, although no formal contract had been signed, commitments evidently made persuaded the Council that cancellation of already planned sponsorship activity/events may implicate breach of contract considerations that the Bar had failed to take into account.

In light of these concerns, staff recommends a two-phase approach to policy implementation, with the Sections being allowed to continue to provide sponsored or non-section member dues-funded alcohol at events through 2016. The goal is to move swiftly, while allowing the Sections time to prepare for a change in their operations under the more restrictive policy beginning January 1, 2017.

In an effort to identify an alternative approach, staff has also explored alternate approaches to remove itself as a party to the purchase of alcohol, including direct contracting between external sponsors and event venues. The State Bar, as the event organizer, contracts with venues for space, catering, and any alcohol services. In most cases, venues will not contract separately with external sponsors for alcohol/catering. Additionally, in most cases sponsors strongly prefer to write checks to the Section(s)/Office of Education – not a hotel or restaurant where a Sections event is being hosted. These constraints appear to have all but required the Bar to pay the vendor for alcohol as part of the larger venue contract, and render the probability of sponsors contracting directly with event venues low. Though perhaps infeasible, this type of arrangement would however not be precluded under the proposed policy, which restricts State Bar expenditures on alcohol alone.

As a result, should the Board approve this policy change, once implemented, direct participant alcohol purchases appear to be the most viable mechanism (but perhaps not only, should direct payment by sponsors be arranged) for continuing to have alcohol at State Bar events.

ADDITIONAL POLICY WORK NEEDED

This agenda item addresses a discrete issue that, while important, represents only a small percentage of overall event expenditures. As noted in the 2016 Governance in the Public Interest Task Force Report:

A majority of Task Force members agreed that all fiscal policies must be unified under one system. The Board has addressed these differences in its own expense reimbursement policy, setting out a rigorous expense oversight control system so that, after review, all Trustee expenses are governed by the State Bar's standard government reimbursement procedures and also set forth on the State Bar's Public website. The Board must decide whether it will apply the same set of policies to all funds received by the State Bar, irrespective of source, and apply consistent reimbursement policies to all who work for the State Bar, particularly the Sections and related volunteer activity.

There are a number of issues to be addressed including parameters for entertainment, awards, and meal and lodging expenses outside of standard per diem rates. In addition, although the Bar has a policy on Event Sponsorship, that policy dates back to September 16, 2006, and appears to specifically exclude the Sections and other “member benefit programs”. It also does not clearly address *internal* sponsorship issues; currently, several State Bar programs support various activities, such as meals, entertainment, and awards purchases, some via direct payment and others via sponsorship. One such program is the Affinity and Insurance program; associated revenue represents unrestricted General Fund dollars which could, and should, be used solely in support of the State Bar's public protection functions.

The need for such policy work is clear. Recently, for example, staff determined that several upcoming events, including planned “casino nights” and luaus, some of which were intended to be supported by funds that could be used for the Bar's public protection purposes, were not appropriate activities to be held under the auspices of the State Bar as a regulatory agency committed to public protection as its highest priority; as such, these events were either cancelled or contracts not signed. Section representatives have understandably objected to these ad hoc cancellations absent any clear policy.

Because the impact of modifying current practices in these areas may be quite significant for some of the Bar's key stakeholders, including of course the Sections but also many Bar Committees, staff recommends that this effort be assigned to the Stakeholders, Access to Justice, and Appointments Committee, with that Committee being asked to recommend new policies to the Board at its January, 2017, meeting.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

None.

BOARD GOALS & OBJECTIVES

None.

BOARD OF TRUSTEES RESOLUTIONS

Should the Board of Trustees agree with the proposed recommendations, adoption of the following resolutions would be appropriate.

RESOLVED, that the Board of Trustees hereby authorizes staff to adopt and implement the following policies, to be disseminated via an Administrative Advisory:

1. Effective immediately, no State Bar funds, other than those provided by external sponsors or non-section member dues revenue, may be used for alcohol purchases; and,
2. Effective January 1, 2017, any State Bar spending on alcohol is prohibited, irrespective of the funding source, including external sponsorship.

FURTHER RESOLVED, that the Board of Trustees refers the development of additional policy addressing meals, awards purchases, entertainment, lodging, and sponsorship to the Stakeholders, Access to Justice, and Appointments Committee, for report back to the Board at its January, 2017, meeting.

ATTACHMENT(S) LIST

None.