

AGENDA ITEM

707 SEPTEMBER 2016

DATE: September 9, 2016

TO: Members, Board of Trustees

FROM: Elizabeth Rindskopf Parker, Executive Director

SUBJECT: Proposed Structure of Board Committees, Trustee Liaison Assignments, Standing Committees, and other Sub-entities

EXECUTIVE SUMMARY

The State Bar is exploring various ways to change how the State Bar, the Board of Trustees, and the State Bar's numerous sub-entities function, in response to concerns identified in the Governance in the Public Interest Task Force (GIPITF) Report and by others. This initial Agenda Item presents several specific recommendations aimed at improving efficiency, oversight, and the overall functioning of the State Bar and its Board of Trustees, as related to its committee and other sub-entity structure.

BACKGROUND

Efforts to address the State Bar's sprawling committee and sub-entity structure have occurred since at least 2001. In that year, the State Bar, in response to the recent fee bill veto, undertook a comprehensive review of its committees. The Board memo reflecting this effort is provided as Attachment A. The project never moved forward as the Board then began a strategic planning effort, which produced its first interim strategic plan in 2002.

In 2004, a policy requiring a "Periodic Review of Need for Advisory Committees" was adopted by the Board of Trustees (Attachment B). The Policy required that every five years each advisory committee would report in writing to the Planning and Budget Committee, and any other appropriate Board oversight committee as to whether the advisory committee should continue to exist and if so, in what structure. The Planning and Budget Committee was charged with making related recommendations to the Board. Though codified in Board Book policy,¹ this five year review cycle has never been implemented.

A 2005 memorandum to the Board's 1) Member Oversight Committee; 2) Regulation, Admissions, and Discipline Committee; and 3) Stakeholder Relations Committee outlined

¹ Standing and Special Committees, Article 5, Section 1: Periodic Review of Need for Advisory Committees - Every five years each advisory committee must report in writing to the Planning and Budget Committee, and any Board committee with oversight responsibility about whether the advisory committee should continue to exist and whether it should maintain its current structure. The Planning and Budget committee may make a recommendation to the Board to continue, modify, or do away with the committee and/or its charge.

challenges with the Bar's existing committee structure, as well as a committee workplan development and review process designed to address those challenges. That memorandum is provided as Attachment C. In 2007, the need for more effective oversight of the committees, as well as the workplan development and review process, was again outlined in a memorandum to these three Board Committees (Attachment D).

In 2008, it was decided by then Executive Director Judy Johnson, that the "Proposed Work Plans" which had been developed annually since 2004 to assist the Board in the budget development process, would no longer be required. The thought was that a new performance-based budgeting process could effectively replace these Work Plans.

What remained of the prior Work Plan process was continued oversight by the then pertinent Board Committees: Member Oversight, Regulation Admissions and Discipline, and Stakeholder Relations. These Committees were responsible for assessing the accomplishments of State Bar committees, tracking progress, identifying areas for improvement, and recognizing/rewarding performance. In addition to an "annual report," each State Bar committee was required to periodically report to its respective Board Committee on its work.

The 2016 GIPITF report highlights and expands upon what appear to be longstanding concerns with the Bar's committee and sub-entity structure, including as related to the large number of these bodies:

The Task Force agreed that the State Bar must assess the huge number of existing committees, boards and commissions and their siloed operations and whether this has inadvertently resulted in the State Bar expanding its mission into areas that are only tenuously related to "core" public protection activities. Additionally, as required by the State Bar's Board Book, its operational manual, the Board must satisfy the requirement of reviewing the operational plans of all such entities on an annual basis to ensure that they are operating consistently with the State Bar's strategic plan. The requirement for a five year 'sunset review' of all such bodies should also be implemented.²

The present agenda item thus advances efforts that have been underway for a number of years, with a most recent emphasis and codification in the 2016 GIPITF report and recommendations.

In addition to addressing recommendations and previous efforts regarding the proliferation of committees and sub-entities, the present agenda item also seeks to implement another 2016 GIPITF recommendation: *"In addition, the Task Force recommends that the Treasurer should head the Planning and Budget Committee, to be combined with the Audit Committee (i.e. the 'Planning, Budget and Audit Committee'). All three Board officers should be responsible for the State Bar's statutorily required annual planning meeting."*³

² GIPITF report, page 28.

³ GIPITF report, page 20.

DISCUSSION

For the reasons discussed below, the following recommendations are made:

1. Combine the Planning and Budget Committee and the Audit Committee, with the Treasurer serving as Chair of the combined Committee.

Although the existing Planning and Budget Committee is focused broadly on planning and budgetary issues, and the Audit Committee is focused more specifically on financial audits, financial and budgetary issues are intertwined. Moreover, the Treasurer is key to both Board Committees and, under current Board policy, serves as Chair of the Audit Committee and either Chair or Vice Chair of the Planning and Budget Committee. Under this recommendation, the Treasurer would serve as Chair of a single Board Committee. That would eliminate one Board Committee while maintaining the functions, resulting in a more efficient Board Committee structure.

2. Combine the Stakeholders and Access to Justice Committee and the Nominations and Appointments Committee.

Historically, both of these Board Committees have been involved with a relatively discrete set of issues. Their functions overlap, however, to the extent both deal with issues concerning individuals and entities that are external to the State Bar (i.e., neither members of the Board of Trustees nor State Bar staff). The work of these two Committees could easily be folded into a single Board Committee, combining the current charters of both, and resulting in a more efficient Board Committee structure.

3. Amend the charter for the Admissions and Education Committee to make that Committee's focus on preventative public protection explicit.

As noted in the GIPITF report: "Eventually *all* members [of the Task Force] agreed that public protection must be more than the merely regulation and discipline of lawyers. It must also include a *proactive* function both to prevent discipline problems and to contribute to the effective functioning of a legal system that is broadly inclusive and accessible." The Admissions and Education Committee already serves an important *preventative* public protection role. This proposal would make that an explicit part of the Committee's charter.

4. Assign responsibility for the annual strategic work session to the Vice President and Treasurer.

Under existing Board policy, the Planning and Budget Committee is "responsible for organizing and presenting the annual strategic work session" and "coordinating with the President and Vice President the overseeing and preparation for, and hosting, the annual strategic work session." Under this proposal, responsibility for the annual strategic work session would be assigned to two Board members, allowing for more nimble and ongoing work than what is feasible under the current Board and Board Committee meeting structure.⁴ At the same time, the newly combined Planning, Budget, and Audit Committee (with the Treasurer as Chair) would retain ongoing planning responsibilities.

⁴ Although the 2016 GIPITF report recommended that responsibility for the Board's annual planning meeting be vested in all three Board officers, staff recommends that two, versus three, members be responsible for this function.

5. Revise the current Board policy on legislative liaisons, to establish a more expansive policy on legislative and communications liaisons.

Current Board policy provides for the designation of two Trustees to serve as legislative liaisons “regarding the development of legislative proposals that may lead to requests for an affirmative vote by the Board of Trustees to sponsor specific legislation.” That policy is overly narrow and limited. This proposal would expand that policy to include both communications and legislation, and would not be limited to potential State Bar sponsored legislation.

6. Reduce the number of Board liaisons to State Bar Standing Committees and other entities.

The Board currently makes annual appointments to 56 State Bar and external entities. With respect to those entities, the Board currently makes Trustee liaison assignments to 37 entities as a matter of Board policy: 10 Standing Committees, 16 Section Executive Committees, and 11 Special Boards, Committees and Commissions. In 2015-2016, the Board also made a special liaison assignment to the Review Committee of the Commission on Judicial Nominees Evaluation. With one Trustee liaison assigned to each of the 16 sections and two to all other bodies, this resulted in a total of 60 Trustee assignments. The impact on Trustee time and focus, not to mention the expense of attendance and workload impact for staff, is significant.

Under current Board policy, each Trustee is assigned to serve as a liaison to one or more of the State Bar’s standing committees, section executive committees, special boards, committees and commissions. In addition, the liaison reimbursement policy suggests that two Board members will ordinarily be assigned to at least some of those entities. Under this proposal, the President would be authorized to determine which, if any, Board members will be assigned to serve as liaisons to which, if any, of those entities. This proposal would also eliminate the 16 Section Executive Committees as entities that may be assigned a Board liaison, but retain the Council on State Bar Sections as one such entity. Reducing the number of liaison assignments will both reduce cost and re-focus the limited time and attention of Board members on the State Bar’s most important public protection functions and activities.

7. Direct staff to study various potential efficiencies relating to State Bar sub-entities, and provide a report on the results of those studies at the Board’s November 2016 meeting.

It is recommended that staff be directed to study various potential efficiencies relating to State Bar standing committees, special boards and commissions, as follows:

1. Direct staff to work with the a) Committee on Administration of Justice; b) Committee on Alternative Dispute Resolution; c) Committee on Appellate Courts; and d) Committee on Federal Courts, to develop a proposal to identify their core functions and to develop a proposal to transition those core functions from the Committees to another Committee, Section, or sub-entity of the Bar, thus reducing the number of Standing Committees by four. Further direct staff to report on transition steps, and provide a transition timeline, at the Board’s November 2016 meeting.

2. Direct staff to work with the a) Standing Committee on the Delivery of Legal Services; b) California Commission on Access to Justice; and c) Legal Services Trust Fund Commission, to identify their core functions, and to develop a proposal to reduce the number of

entities performing those functions from three to two. Further direct staff to present that proposal, along with a transition timeline, at the Board's November 2016 meeting.

3. Direct staff to work with the Committee on Group Insurance Programs and Committee on Professional Liability Insurance, to develop a proposal to combine those two Standing Committees and present that proposal, along with a transition timeline, at the Board's November 2016 meeting.

4. Direct staff to work with the California Board of Legal Specialization, to consider the continued need for 11 Advisory Commissions, and whether the decision to use reserve funding for professional exam preparation and grading will impact the need for those Advisory Commissions. Further direct staff to present the conclusions, along with any proposed changes, at the Board's November 2016 meeting.

5. Direct staff to work with the Judicial Nominees Evaluation (JNE) Commission, to consider the continued need for the Review Committee of the JNE Commission (RJNE), and whether staff could perform the work of RJNE. Further direct staff to present its conclusions, along with any proposed changes, at the Board's November 2016 meeting.

6. Direct staff to work with the California Young Lawyers Association (CYLA), to review the work of CYLA and present a recommendation regarding the continued need for a formal Association at the Board's November 2016 meeting.

7. Direct staff to review Board appointments to the following external entities, and the basis of those appointments, and to make recommendations regarding appointments that should be continued or discontinued at the Board's November 2016 meeting:

- A. American Bar Association House of Delegates
- B. Law School Council
- C. Continuing Education of the Bar Governing Committee⁵
- D. Legal Services Programs Governing Boards⁶

FISCAL/PERSONNEL IMPACT

Positive fiscal impact resulting from consolidation and related efficiencies, in an amount not yet determined.

⁵ This is a joint committee of the State Bar of California and the University of California, so is "external" at least in part. Board appointments to the Governing Committee are made pursuant to a 2001 Memorandum of Understanding between the State Bar and the Regents of the University of California.

⁶ Under 45 CFR 1607.3, a majority of the members of these governing boards "shall be attorney members appointed by the governing body(ies) of one or more State, county or municipal bar associations, the membership of which represents a majority of attorneys practicing law in the localities in which the recipient provides legal assistance." State Bar appointments do not appear to be required, but further analysis of this question is needed.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

Amendments to:

1. Tab 5, Article 2, Section 4, Page 8
2. Tab 9, Article 3, Page 9
3. Tab 9, Article 9, Pages 17 – 20
4. Tab 9, Article 6, Pages 13 – 14
5. Tab 9, Article 7, Pages 15
6. Tab 9, Article 5, Pages 12
7. Tab 10, Article 1, Section 4, Pages 8 – 9
8. Tab 6, Article 5, Section 8, Page 13
9. Tab 6, Section 7, Pages 9 - 13
10. Tab 19, Article 1, Section 8, Pages 5 - 7
11. Tab 19, Article 1, Section 9, Page 8

PROPOSED BOARD OF TRUSTEES RESOLUTIONS:

RESOLVED, that the Board of Trustees hereby combines the Planning and Budget Committee with the Audit Committee, creating the Planning, Budget, and Audit Committee; and it is

FURTHER RESOLVED, that, upon the combination of the Planning and Budget Committee with the Audit Committee, and the creation of the Planning, Budget, and Audit Committee, staff shall review the Board Book and make all non-substantive amendments to conform with this change; and it is

FURTHER RESOLVED, that the Treasurer shall serve as the Chair of the Planning, Budget, and Audit Committee; and it is

FURTHER RESOLVED, that the Board of Trustees hereby combines the Stakeholders and Access to Justice Committee with the Nominations and Appointments Committee, creating the Stakeholders, Access to Justice, and Appointments Committee; and it is

FURTHER RESOLVED, that, upon the combination of the Stakeholders and Access to Justice Committee with the Nominations and Appointments Committee, and the creation of the Stakeholders, Access to Justice, and Appointments Committee, staff shall review the Board Book and make all non-substantive amendments to conform with this change; and it is

FURTHER RESOLVED, that the Board of Trustees hereby amends the charter for the Admissions and Education Committee to make that Committee's focus on preventative public protection explicit; and it is

FURTHER RESOLVED, that the Board of Trustees hereby determines that the Vice President and Treasurer shall be responsible for the annual Strategic Work Session; and it is

FURTHER RESOLVED, that the Board of Trustees hereby amends the Board policy on legislative liaisons, establishing a more expansive policy on legislative and communications liaisons; and it is

FURTHER RESOLVED, that the Board of Trustees hereby amends the Board Liaison Policy for State Bar Committees to 1) provide that the President is authorized to determine, at his or her discretion, which, if any, members of the Board of Trustees will be assigned to serve as liaisons to which, if any, of the State Bar standing committees, special boards, committees and commissions, thereby replacing existing Board policy, which provides that each member of the Board of Trustees will receive such an assignment; 2) eliminate any suggestion in the existing reimbursement policy that two members of the Board of Trustees will ordinarily be assigned to serve as liaisons to such committees; and 3) eliminate the 16 Section Executive Committees as entities that may be assigned a Board liaison, but retain the Council on State Bar Sections as one such entity; and it is

FURTHER RESOLVED, that the Board of Trustees hereby directs staff to study various potential efficiencies relating to State Bar sub-entities and provide a report on the results of those studies at the Board's November 2016 meeting, as more fully described in No. 7 of the Discussion section of this Agenda Item.

ATTACHMENT LIST

- A.** July 11, 2001 - Board Created External and Standing Committees
- B.** July 24, 2004 – Advisory Committee Work Plans Review Process and Criteria
- C.** October 3, 2005 - Work Plan Review Process
- D.** October 17, 2007 - Advisory Committee Oversight/Work Plans
- E.** Proposed Board Book Amendments