

AGENDA ITEM

JANUARY 17, 2017

DATE: January 17, 2017

TO: Members, Task Force on Governance in the Public Interest

FROM: Elizabeth R. Parker, Executive Director

SUBJECT: 2017 Task Force on Governance in the Public Interest: Meeting Topics and Schedule in light of Departure of the State Bar Sections

EXECUTIVE SUMMARY

At the October 2 meeting of the Board of Trustees, the seven members of the 2017 Task Force on Governance in the Public Interest ("Task Force") were selected, pursuant to statutory prescription. On December 12 the Task Force met to develop its agenda for developing a Report due at the Supreme Court, Legislature, and Office of the Governor on May 15, 2017. At this meeting three topics were identified for study (A. Definition of Public Protection; B. Governance Structures; and C. Review of Board and Committee Structures).

In the meantime, the State Bar's Council of Sections are discussing changes in their relationship with the State Bar. Responding to the operational challenges created by recent statutory and administrative policy changes, all designed to increase the State Bar's focus on its core licensing, regulatory and disciplinary functions, the Sections are exploring separating from the Bar and moving into a new free-standing entity. At the request of the Council of Sections, on December 12, 2016 the State Bar Board of Trustees authorized creation of a joint delegation of Bar Trustees and Section Leadership so that a discussion could occur with the Legislature about how a separate entity to house the Sections might most successfully be structured.

On January 11, 2017 the first of several meetings with the Legislature by the joint delegation took place. The delegation learned that the separation of the Sections will be part of the 2017 Fee Bill (rather than included in separate legislation). The delegation was also encouraged to develop a joint legislative proposal. Work is underway on that now.

The departure of the Sections will impact work of the 2017 Task Force significantly. Additionally, the abbreviated time frame for preparing the 2017 Task Force Report requires careful co-ordination if the Task Force is to contribute to the work of the Board of Trustees as it develops a five-year strategic plan and a 2017 Fee Bill which can assist the Sections to a successful separation from the State Bar. A meeting schedule, setting times for Task Force discussion of topics and Board review, has been designed to foster co-ordination and is attached (Exhibit A).

BACKGROUND

A. Schedule and Agenda for the 2017 Task Force.

The 2017 Task Force membership was selected to meet statutory requirements at the October 2 meeting of the Board of Trustees. A schedule of meetings to accommodate the three topics identified in the 2016 Task Force, now augmented by discussion at the Task Force December 12 meeting, while also allowing for periodic Board briefings, has been created.

The 2017 Task Force schedule is set forth below.

- Meeting 1: October 2 (San Diego)--Selection of Task Force members
- Meeting 2: December 12 (San Francisco)--Adoption of Agenda
- Meeting 3: January 17 (San Francisco)--Discussion
 - Topic A: *Clarification of the State Bar's public protection mission, in light of the State Bar Section's December 22 decision to proceed with separation and the January 16 Executive Committee request for Task Force help with the separation process.*
- Meeting 4: February 9 (Los Angeles)—Discussion
 - Topic B: *Changes in Board composition, size and terms of office (e.g. Public members, elected members, extended officer terms) for better functioning; and consideration of the impact of new senior management positions, created in 2015 (changed role for CEO, a new COO position and change in General Counsel reporting), on Board functioning.*
- Meeting 5: March 8 (Los Angeles)—Discussion
 - Topic C: *The role of various sub-entities (e.g. committees and volunteers) and their relationship to the State Bar, along with consideration of how the Board of Trustees and its own committees should best be structured and managed for best performance.*
- Meeting 6: April 24 (San Francisco)—Discussion of Preliminary Draft Report
 - *Draft Report will be circulated to full Board for comment.*
- May 15 Report Delivery to Supreme Court, Legislature and Office of the Governor

Reports of Task Force activity will be shared for discussion with the Board of Trustees at regularly scheduled meetings as follows:

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| • January 26/28 (San Diego) | Topic A Report |
| • March 9 (Los Angeles) | Topic B and C Report |
| • May 11 (San Francisco) | Final review of Draft Report |

Exhibit A summarizes these schedules.

B. Recent Events Impacting Work of the 2017 Task Force.

Following the December 12, 2016 meetings of the Task Force and Trustees respectively, several developments occurred which impact the Task Force work.

- On December 22 the Council of Sections voted to proceed with separation discussions as part of a joint State Bar-Council of Sections delegation (“Joint Delegation”);
- On January 11 the Joint Delegation, authorized at the Board of Trustees’ December 12 meeting, met with Senator Hannah Beth Jackson, Chair of Senate Judiciary Committee and author of 2017 Fee Bill to discuss:
 - Options for creating a separate entity to house the Sections at their separation; and
 - Inclusion of a separation proposal in the 2017 Fee Bill.
- On January 16 the State Bar Executive Committee agreed to request Board approval to:
 - Negotiate separation provisions for the Sections to include:
 - A unified organization;
 - A special Relationship with the State Bar (provision for collection of membership dues and other possible support); and
 - Request Staff to:
 - Review the fiscal and personnel impact of separation, and
 - Prepare a transition plan to separate the Sections from the State Bar.
 - Request the Governance Task Force to:
 - Assist in consideration and review of the separation provisions;
 - Assess the impact of separation on State Bar operations, structure and governance; and
 - Recommend responses to separation proposals and transition plan.

DISCUSSION

The third Task Force meeting on January 17, 2017 will focus on Topic A: Defining Public Protection After the Departure of State Bar Sections.

The 2016 Governance Task Force recommended that the 2017 Task Force address the need to better define “public protection,” a priority first established by statute in 2011 by Business and Professions Code section 6001.1:

Protection of the public shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

Discussion about how, and the degree to which, functions supported by the State Bar contribute to its primary public protection mission has stimulated thinking about the nature of public protection and how a definition might be developed. Three resulting views have received wide acceptance.

- 1) Public protection is both proactive and reactive; harmful actions by lawyers must be both prevented as well as punished.
- 2) Public protection is both direct and indirect; for example, discipline directly benefits the public but also indirectly benefits lawyers, even though they are ethical, by ensuring the quality of the profession over all; in contrast, continuing legal education directly benefits lawyers individually by improving their professional competence, but it indirectly benefits the public who gain from a better qualified legal profession.
- 3) Access to justice and the successful functioning of the legal system provides the context needed to achieve public protection; licensing lawyers, selecting qualified judges, and supporting access through legal services are examples.

Now, separation from the State Bar of the sixteen State Bar Sections, anticipated as part of the 2017 Fee Bill, creates a new context for the Task Force for defining the public protection mission. Functional areas, beyond activities of the Sections, should be part of this public protection discussion. Defining public protection carefully will produce the desired outcome in each functional area.

Three observations, presented by organizational design consultant Dr. Elise Walton at the December 12 Task Force meeting, serve as useful guideposts for discussing public protection for a State Bar which no longer includes the sixteen Sections:

- Changes to organizational structure which impact performance overall should be considered 'holistically.'
- An organization's core purpose and outcomes (e.g. products or performance) are important to identify in considering the ideal organizational design.
- Individual structures should be considered in a broad context.

Dr. Walton advised approaching these topics with a process of deliberation, debate and decision, with support from those who know and understand the organization well.

The December 12 Task Force focused preliminarily on a public protection definition offered by Trustee Renee LaBran:

The organization should ensure the ethical and effective practice of law for all those in need of legal services by deterrence, education, monitoring and discipline

In response, Task Force members made the following observations.

- Greater emphasis on the role of regulation is needed.
 - The State Bar's service population should shift from lawyers to the 39M California residents the State Bar is designed to protect.
 - A 'paradigm shift' is needed in the State Bar's role and mission to that of a consumer protection agency.
- The State Bar's placement in the judicial, rather than executive, branch may impact its public protection role.
- It will be necessary to understand what it means to be a public protection agency. What would be involved in moving to this mission definition?

- Greater education of the public about the State Bar's mission is needed; this might be helped with a change of name and mission description. Education might also be relevant to addressing market place malfeasance in partnership with other entities.
- Clarification is needed about the relative priority among licensing, regulation, and discipline as against improving the administration of justice. It will be important to understand how the enhancement of justice complements and furthers the State Bar's public protection functions.
- Will providing services to licensees, even after the departure of the State Bar Sections, continue to create confusion about the State Bar's public protection mission?
- How can State Bar functional areas be measured and tracked to determine outcomes?

Staff suggests that the conversation about how the evolving definition of public protection might proceed would best be advanced to considering how each of the various State Bar functions meet the considerations noted above. This will also help to decide which functional areas should retained in light of the Sections separation.

FISCAL/PERSONNEL IMPACT

Without doubt, separation of the Sections from the State Bar will have an important impact on the State Bar, including its fiscal and personnel situation. The Board of Trustees has instructed the Task Force to examine the three issues noted above with the impact of separation in mind; and also to consider the transition plan staff will prepare with the goal of minimizing the disruption of the Sections' separation from the State Bar.

STAFF RECOMMENDATIONS

Staff recommends that the Task force work in two person teams to develop recommendations on each of the three topics which would be presented by the Board for possible adoption and inform the development of the 2017 Fee Bill. The proposed teams are as follows:

Topic A—Definition of Public Protection after departure of the State Bar Sections—Renee LaBran and Alan Steinbrecher;

Topic B—Board Governance, Organizational Design and Structure—Mark Broughton and Richard Ramirez;

Topic C—Board and Sub-entity Committee Structure and Function—Sean SeLegue and Joanna Mendoza

Staff further recommends that the sub-groups work with staff to prepare draft position papers to inform the Board of Trustees in advance of the meetings designated for discussion of the three topics respectively, so as to facilitate the need for deliberation, debate and decision.

Exhibit A
2017 Governance in the Public Interest Task Force
Meeting Schedule

Topic/Activity	Task Force Discussion	Report to Board	Draft Circulation
<i>A: Clarification of the State Bar's public protection mission in light of the 2017 separation of the Sections</i>	Meeting 3—January 17 (SF) (Task Force members: LaBran and Steinbrecher)	January 26/28 (San Diego)	
<i>B. Changes in Board composition, size and terms of office and impact of management changes to improve functioning</i>	Meeting 4—February 9 (LA) (Task Force members: Broughton and Ramirez)	March 9 (LA)	
<i>C. The role of various sub-entities and structure and performance of Board committees to improve functioning</i>	Meeting 5—March 8 (LA) (Task Force members: Mendoza and SeLegue)	March 9 (LA)	
<i>Preparation and Review of draft Report</i>	Meeting 6—April 24 (Discussion of Draft Report)		
Drafting the Report	No in person meeting	May 11 (SF)	
Delivery of Report	May 15		