

AGENDA ITEM

701 JANUARY 2017

DATE: January 24, 2017

TO: Members, Board Executive Committee
Members, Board of Trustees

FROM: Elizabeth R. Parker, Executive Director

SUBJECT: Separation of Sections from the State Bar in Context of 2017 Fee Bill

EXECUTIVE SUMMARY

For the past several months, the State Bar's Council of Sections has been discussing changes in their relationship with the State Bar, including various forms of separation, in light of operational challenges resulting from recent statutory and administrative policy changes, designed to increase the State Bar's focus on its core regulatory functions. At its December 12, 2016 Meeting, the State Bar Board of Trustees authorized creation of a joint delegation of Bar Trustees and Section Leadership to discuss with the Legislature how a separate entity to house the Sections might be structured.

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

Board approval has not customarily been sought to direct State Bar executive leadership to negotiate specific provisions of the annual Fee Bill. Typically the Fee Bill process is sufficiently dynamic that it would be difficult to do so. In 2017, however, it is now becoming increasingly clear that the Fee Bill will likely include provisions to separate the Sections from the State Bar. This change will be significant for the State Bar's operations, structure and governance functions.

This development is sufficiently important to the future of the State Bar that staff recommends that the Board should authorize Bar leadership to negotiate a 2017 Fee Bill that would have as its principal provision the separation of the Sections from the Bar. Certain elements of this proposal have already received broad consensus support, including that the 16 Sections remain united together as one entity, enjoy a special partnership with the State Bar (including by having the Bar collect Section dues on their behalf as part of the annual fee statement), continue their vital education function, and receive their reserve funds and intellectual property. Staff asks that the Board authorize leadership to pursue these provisions as part of separation discussions in the context of the 2017 Fee Bill.

If authorized to do so by the Board, staff will work to advance a legislative proposal that includes these goals as well as others which may be jointly developed by Bar leadership in discussions with the Council of Sections, and in consultation with the Supreme Court, both Legislative houses, and the Office of the Governor.

At its January 16, 2017 meeting, the Board Executive Committee recommended that the full Board of Trustees approve this item.

BACKGROUND

Over the course of the past year, changes to the governance of the State Bar, designed to increase the Bar's focus on its core regulatory functions, have adversely impacted the operations of the Sections. The application of the Bagley-Keene Open Meetings Act on April 1, 2016 to the entire Bar, including the Sections, has complicated the ability of Section committees to conduct their operations. Bar policies concerning outside sponsorship, restrictions on use of member dues for alcohol, and limitations on hosting events at resort-style venues, enacted in response to concerns identified by the State Auditor and legislative overseers, have also impacted the Sections' events. These and other concerns prompted the Council of Sections to consider separating from the Bar and were discussed at the December 12, 2016 Board of Trustees Meeting, when the Board voted to authorize Bar leadership jointly with the Sections to approach the Legislature concerning approaches to achieving separation.

On January 11, 2017, a joint delegation consisting of Bar President Jim Fox, Trustee Rich Ramirez, Executive Director Elizabeth Parker, Council of Sections Co-Chair Emily Aldrich, Council Vice Chair Perry Segal, and Council Members Vanessa Kirker-Wright (Family Law Section) and Chip Wilkins (Environmental Law Section) met with Senator Hannah-Beth Jackson, Chair of the Senate Judiciary Committee and author of the 2017 State Bar Fee Bill.¹ Senator Jackson listened to the concerns of the Sections and Bar leadership and stated her intention to work with all parties on the issue of separation.

At its January 23, 2017 meeting, the Council of Sections discussed two possible forms of separation from the Bar: either into a governmental entity or a private 501(c)(6) non-profit organization. To represent the views of Sections that favor a private organization approach, the Council voted to add two additional members to the delegation: Ben Ginsburg (Litigation Section) and Betty Williams (Taxation Law Section).

Following the meeting with Senator Jackson, which was scheduled first in recognition of her key role as the author of the 2017 State Bar Fee Bill, the expanded delegation also plans to meet with the Chair and representatives of the Assembly Committee on Judiciary and the Governor's office. The Supreme Court will also be kept aware of these discussions as they progress.

¹ The delegation was accompanied by James Chang, Office of General Counsel, and Jennifer Wada, lobbyist for the State Bar. State Bar Vice President Danette Meyers, also a delegation member, was unable to join the meeting.

Staff advises that it has received approval from the Chief Justice to proceed with discussions to separate the Sections from the State Bar, but with the further understanding and limitation that no resulting entity to house the Sections should be a part of the Judicial Branch.

DISCUSSION

While Board approval has not been customarily sought to authorize Bar leadership to negotiate specific provisions with the Legislature for inclusion in the annual Fee Bill, the separation of the Sections from the Bar has now been identified as a matter that will be included in the 2017 Fee Bill and Senator Jackson has invited the delegation to indicate how best to structure the resulting entities. This is a matter of great structural significance for the State Bar, which will have a significant impact on Bar operations and governance. Staff believes that direction from the Board will be important before leadership takes further action.

Discussion among Bar leadership and members of the Council of Sections toward developing a legislative proposal for separation is still at an early stage. Nevertheless, some elements already enjoy broad consensus, while others have been identified as important topics for discussion:

- Unity of the Sections – The Sections and Bar leadership believe strongly that for the greatest likelihood of success, the Sections should remain united as a single entity.
- Special Relationship with the State Bar – The Sections and the Bar both desire to continue in a close relationship under which the State Bar would continue to collect dues for the Sections as a part of the licensing fee statements issued annually to all members of the Bar. This ‘special relationship’ may also include partnerships on affinity and insurance programs and other provisions, still being explored.
- Sections’ Commitment to Legal Education – The Sections are committed to continuing their core mission of providing high-quality and low cost continuing legal education to enhance the practice of law. The Sections and Bar leadership have agreed to explore how to advance this mission. The idea of designating the new entity as the statutorily-mandated provider of low-to-no cost MCLE (BPC § 6070(d)) has been proposed and will be studied. The State Bar will continue to provide education programming directly related to its discipline, regulation, and licensing functions.
- Transfer of Reserve Funds and IP – The Sections and Bar leadership are committed to the future success of the Sections’ successor entity and recognize that the transfer of dues collected on behalf of the Sections and unexpended (reserves) and intellectual property developed by the Sections (including but not limited to publications, webinars, and membership lists) will be important topics to resolve in any separation plan.
- Transition Plan – During the transition period into a separation entity, both Bar leadership and the Sections want to develop a plan which can assist the Sections in

moving successfully into an independent entity, with due regard for the impact such a change will have on State Bar employees and State Bar fiscal health.

In addition to these elements, many of which enjoy broad consensus, the Council and Bar leadership are continuing to discuss other features of a separation plan, some of which may also be included in the Fee Bill legislation.

FISCAL/PERSONNEL IMPACT

The annual Fee Bill authorizes the State Bar to collect licensing fees which fund the vast majority of State Bar operations, as well as the voluntary member dues which support the Sections. Failure to obtain a Fee Bill has a significant impact on Bar operations and may also impact the Sections, as well. Last year, the Legislature adjourned without passing a Fee Bill, necessitating an emergency petition to the California Supreme Court for a licensing fee assessment. Although the Supreme Court has ordered a limited fee assessment for 2017, the Bar's 2017 operations are not fully funded. The Court also appointed a special master to oversee the Bar's operations. Should the Fee Bill again fail to pass this year, a significant impact on the Bar's operations and fiscal health is likely. Separation of the Sections is also expected to have significant fiscal and personnel impacts on the Bar. Bar leadership are committed to working with Sections staff to mitigate the impact of separation.

Accordingly, staff recommends development of a comprehensive analysis of the impact of the separation of the Sections from the Bar, as well as preparation of a transition plan for moving the Sections into their own independent entity. These will serve to guide the Board's further decision-making on the numerous topics which will need to be addressed as separation proceeds.

BOARD COMMITTEE RECOMMENDATIONS

The Board Executive Committee recommends that the Board of Trustees approve the following resolutions:

RESOLVED, that, in continuing consultation with the Supreme Court, the Board of Trustees authorize State Bar leadership to negotiate with the Legislature and Governor provisions in the 2017 Fee Bill, which will have as a central feature the separation of the Sections from the State Bar;

FURTHER RESOLVED, that State Bar leadership seek to include provisions in the 2017 Fee Bill that will ensure that the sixteen State Bar Sections are assisted to move into a free-standing unified entity; that a special relationship between the State Bar and the Sections be established, enabling collection of Sections' membership dues and such other support as may be appropriate; that the Bar be authorized to explore the transfer of intellectual property and reserve funds held on behalf of the Sections and such other support as may be useful to a successful separation, while keeping in mind the obligation to maintain as a priority the licensing, regulatory and disciplinary responsibilities of the State Bar;

AND FURTHER RESOLVED, that the Board of Trustees instructs staff to prepare an analysis of the fiscal and personnel impact of separation of the Sections from the Bar, along with a transition plan which prioritizes the licensing, regulation and discipline responsibilities of the State Bar, and report back to the Board to action and adoption.