

AGENDA ITEM

702 MARCH 2017

DATE: March 2, 2017

TO: Members, Board of Trustees

FROM: Robert G. Retana, Deputy General Counsel
James J. Chang, Assistant General Counsel

SUBJECT: Antitrust Policy

EXECUTIVE SUMMARY

On September 8, 2016 the Supreme Court of California directed the State Bar to formulate a policy, to be presented to the Supreme Court for approval, that the Bar must follow in identifying, analyzing, and bringing to the Court any proposed Board action that implicates antitrust concerns. The State Bar Office of General Counsel ("OGC") has been monitoring closely the State Bar's antitrust compliance in light of a recent decision by the U.S. Supreme Court clarifying the application of the antitrust laws to licensing bodies comprised of market participants. The proposed Antitrust Policy explains the application of antitrust law to the State Bar and establishes a procedure for review by OGC, the Board of Trustees, and the California Supreme Court, of actions that potentially implicate antitrust concerns.

BACKGROUND

The Supreme Court of California has directed the State Bar to develop a policy for identifying, analyzing, and bringing to the Court any proposed Board actions that implicate antitrust concerns. In the wake of the United States Supreme Court's decision in *N.C. State Bd. of Dental Exam'rs v. FTC*, 135 S. Ct. 1101 (2015) ("*North Carolina Dental*"), there has been increased public focus on the application of antitrust laws to state regulatory boards such as the State Bar.

DISCUSSION

The attached Antitrust Policy provides guidance to State Bar Trustees, employees, and volunteers regarding the application of antitrust laws to the State Bar and establishes a procedure for review of any actions that may implicate antitrust concerns. The policy directs State Bar personnel to raise any items of concern to OGC for legal review. If OGC determines there are legitimate antitrust issues, it will make appropriate recommendations to the Board, including referral to the California Supreme Court as necessary. In conjunction with the proposed Antitrust Policy, OGC will provide the Board of Trustees with training in antitrust law in order to assist the Board in its consideration of the proposed policy.

FISCAL/PERSONNEL IMPACT

This policy has no significant fiscal or personnel impact. OGC has already been closely monitoring antitrust compliance of the Bar, and will continue to do so pursuant to this policy.

STAFF RECOMMENDATIONS

Staff recommends that the Board of Trustees approve the following resolutions:

RESOLVED, that the Board of Trustees shall submit the attached proposed Antitrust Policy to the California Supreme Court for its approval;

FURTHER RESOLVED, that if approved by the California Supreme Court, that the Antitrust Policy shall be adopted by the Board of Trustees and distributed to all employees and officers of the State Bar as an administrative advisory.

ATTACHMENTS

1. Proposed Antitrust Policy