

AGENDA ITEM

114 MARCH 2017

DATE: March 1, 2017

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

FROM: Saul Bercovitch, Office of General Counsel

SUBJECT: Board Book Phase II – Substantive Revisions

EXECUTIVE SUMMARY

The State Bar of California's Board of Trustees Policy Manual (commonly known and referred to as the "Board Book") was adopted in September 2004. In July 2015, the Board requested a review of the Board Book with the goal of updating it, making it more user-friendly and better organized. Review of the Board Book was divided into two phases. Phase I was a non-substantive cleanup. The Board has approved the Phase I changes. Phase II involves substantive cleanup. The first part of the Phase II substantive cleanup contained amendments resulting from the application of the Bagley-Keene Open Meeting Act and the California Public Records Act to the State Bar. This is the second and final part of Phase II and consists of proposed revisions regarding 1) the authority to hire, supervise, and fire the Executive Director; 2) oversight of advisory committees and other sub-entities; and 3) the repeal of obsolete policies.

BACKGROUND

The State Bar of California's Board of Trustees Policy Manual (commonly known and referred to as the "Board Book") was adopted in September 2004 as a compilation of statutes, Rules of the State Bar, and other policies and procedures adopted by Board resolutions that govern the operations of the Board and its oversight of the State Bar. The Board Book is intended to be a source book for the Board and State Bar staff to readily find these various provisions.

In July of 2015, the Board requested a review of the Board Book with the goal of updating it, making it more user-friendly and better organized. The ultimate goal is to make the Board Book available to the public to increase transparency and knowledge regarding the State Bar.

Review of the Board Book was divided into two phases. Phase I was a non-substantive cleanup, including revision of the organizational structure of the Board Book. Phase I was presented to the Board of Trustees over the course of several meetings, and the Board approved the Phase I changes. Phase II involves substantive cleanup.

The scope of the Board Book project was limited to a reorganization and cleanup of the content existing at the time, and was not intended to be a substantive review of all existing Board policies. New and amended Board policies are incorporated into the Board Book as adopted, but the “Board Book project” deals only with a limited set of changes. This project is narrowly focused on cleanup. Other potential changes to Board policy can and will be pursued through the appropriate Committees, Commissions, or Task Forces as independent projects, separate and apart from the Board Book project.¹

DISCUSSION

The initial Board Book Phase II Agenda Item contained proposed amendments to Board policy throughout the Board Book that were needed as a result of the application of the Bagley-Keene Open Meeting Act (“Bagley-Keene”) and the California Public Records Act (“CPRA”) to the State Bar. These were presented as part of the “substantive” cleanup because they result in changes to the language of existing Board policy. However, Bagley-Keene and the CPRA had already superseded any contrary language by operation of law, and in all cases the State Bar was in compliance with Bagley-Keene and the CPRA. The particular amendments were simply proposed to correct language in Board policy that, on its face, contradicted or was inconsistent with Bagley-Keene or the CPRA. In November 2016, the Board approved these amendments.

This Agenda Item contains the second and final part of Board Book Phase II. The recommended amendments are redlined in Attachment A. Comments on the recommended amendments are in the footnotes, but those comments are not part of the proposed amendments. The proposed amendments address the following:

1. Under current Board policy, the Board as a whole has the authority to hire, supervise, and fire the Executive Director, and “may do so through its designated leadership of Board President or other designate.” The proposed amendment would delete the quoted portion of the policy. If there is a specific need to delegate, it can be done on a case-by-case basis by Board resolution at the time.
2. A Section of the Board Book addressing oversight of advisory committees contains State Bar entities that are not advisory committees. Those other entities would be deleted from this Section of the Board Book.
3. A Board policy relating to the State Bar Education Foundation would be repealed as obsolete.

FISCAL/PERSONNEL IMPACT

None.

¹ Further changes to the Board Book will also be needed as the structure of the State Bar changes, including modification or deletion of provisions relating to Sections, Committees, and other sub-entities, as the structure changes. This project addresses only the State Bar as it exists today.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

Board Book amendment to the following:

Tab 1.3, Article 1, Section 1

Tab 5.1, Article 5, Section 1

Tab 5.4, Article 2, Section 6

BOARD COMMITTEE RECOMMENDATION

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

RESOLVED, that the Board of Trustees approves amendments to Tab 1.3, Article 1, Section 1; Tab 5.1, Article 5, Section 1; and Tab 5.4, Article 2, Section 6, as presented to the Board this day; and it is

ATTACHMENT LIST

- A.** Proposed Revisions to the Board Book