



THE STATE BAR OF CALIFORNIA

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MEMORANDUM

DATE: April 4, 2017
TO: Governance in the Public Interest Task Force
FROM: Sarah Cohen, Assistant General Counsel
SUBJECT: Guidance for the April 10, 2017, Conference Call

Introduction

With only one more in-person meeting remaining on the GTF schedule, set for April 24, 2017, staff hopes to accomplish three objectives with the upcoming conference call on April 10, 2017.

First, staff has identified a number of discussion items from Topic A, B and C meetings that were left unresolved. The Governance in the Public Interest Task Force (GTF) should determine whether any of the items can be resolved at the upcoming conference call or will require a longer discussion at the final in-person meeting. From staff's perspective, the earlier the remaining issues can be resolved, the less complicated the drafting of the 2017 GTF Report will be.

Second, staff has identified a number of new items that the GTF has not had an opportunity to discuss. In the interest of time, staff has made recommendations with regard to all but one of the new items for GTF to consider.

Third, the next step in the GTF process will be to begin drafting the 2017 GTF Report. Staff welcomes the opportunity to obtain input and feedback from GTF before it undertakes the work of drafting the report.

Items Requiring GTF Resolution

A. Topic A – Mission Statement

After much discussion during the Topic A meeting, GTF produced the following working draft of a new mission statement focused on the State Bar's core functions.

The State Bar of California's mission is to protect the public through the following: proper licensing, regulation and discipline

of attorneys, education to promote the ethical [and effective¹] practice of law; and promotion of access to legal services and the courts for all Californians.

Subsequent to the Topic A meeting, GTF member Mark Broughton provided the Executive Director with the following alternate mission statement proposal:

The mission of the State Bar of California is to protect the public [the courts, and the legal profession] by licensing attorneys, regulating and disciplining the professional conduct of lawyers through the adoption and enforcement of Rules of Professional Conduct, to protect the integrity of the legal system, and promote the administration of justice and confidence in the legal profession.

GTF's task is to finalize the mission statement. To guide you in your final deliberations, Francisco Gomez has assembled the history of the development of the State Bar Mission Statement, set forth in **Attachment A, History of the State Bar Mission Statement**.

B. Topic B – Board Structure

1. New Trustee Training and Orientation Program

The 2016 GTF Report recommended that the new trustee orientation program be enhanced. At the September 12, 2016, Board meeting, the Board voted to adopt this recommendation. At the November 16, 2016, Board meeting, an enhanced orientation program was provided to the new Trustees by State Bar staff. The following topics were included:

- GTF & Overview of Other State Bar Initiatives
 - Classification and Compensation Study & Other Employee Engagement Initiatives
 - Information Technology & Other Data Initiatives
 - Workforce Planning Implementation
 - Lawyer Assistance Program
 - Office of Chief Trial Counsel
 - State Bar Court
 - Probation
 - Client Security Fund
 - Business Process Initiatives for Revenue Enhancement and Expense Reduction
- Facilities Tour
- Bank Grants / New Legal Services Funding
- January 2017 Board Strategic Planning Session

¹ There was no consensus at the Topic B meeting as to whether the word “effective” should be used in a new State Bar mission statement. The concern raised was whether the word has connotations associated with a unified bar.

- Training from the Office of General Counsel
 - Legislative Oversight/Separation of Powers
 - Antitrust
 - Bagley Keene Open Meeting Act
 - California Public Records Act
 - Role of Officers
 - Board Committee Structure
 - Fiduciary Duties
 - Conflict of Interest / Form 700

During the Topic B meeting, GTF discussed the need for further refinements on the enhanced orientation and training program for new trustees. GTF members Mark Broughton, Rich Ramirez, Sean SeLegue and Alan Steinbrecher were tasked to identify topics that, if reviewed early on, would help new trustees become more effective in carrying out their duties. A draft of new topics was circulated for comment, in response to which GTF member Joanna Mendoza suggested additional topics.

GTF's remaining task is to finalize its recommendations for a new trustee training and orientation program. To guide you in your final deliberations, staff has prepared an outline of a training program that incorporates old and new topics and reorganizes them into three training modules, set forth for in **Attachment B-1, New Trustee Orientation and Training Program.**²

2. Governance Reform Proposals

At the Topic B meeting, GTF agreed on a series of governance reform recommendations including a two-year leadership succession ladder. For the first year, a Chair and Vice-Chair would be put forward. Going forward, only a Vice Chair would be put forward. GTF was unable, however, to arrive at a recommendation for a method of officer selection.

GTF's task is to review and ratify the recommendations already agreed to by GTF at the Topic B meeting to ensure that they continue to enjoy consensus support. To guide GTF in this discussion, staff has prepared a summary of those recommendations, set forth for in **Attachment B-2, Summary of Agreed to Governance Reforms.**

3. Officer Selection

GTF's task is to make a recommendation regarding officer selection. To that end, Co-Chairs Richard Ramirez and Mark Broughton have developed the below-described options as a

² In addition to the on-boarding component of a new trustee training and orientation program, the GTF also recommends that an educational component be incorporated into each Board meeting, making training a continuous activity. GTF recommends the creation of an 'information cycle,' by which there would be a series of topics that would cycle through Board meetings to ensure that each incoming group of trustees would eventually be briefed on all significant topics.

starting point for deliberations, all of which are based on the assumption that there will be an automatic advance from Vice Chair to Chair.

I. Maintain Status Quo

II. Option A: Vice Chair nomination by Ad Hoc Nominating Committee with composition resembling GTF

A. Composition of Nominating Committee:

1. Five to Six Trustees: Similar to GTF model, membership from each of the appointing authorities and elected Trustee positions (until elected Trustees phased out) plus outgoing Chair.
2. Limit: One term

B. Process: Nominating Committee nominates two Trustees for full Board for consideration as Vice Chair

C. Vice Chair qualifications:

1. Minimum two years on Board
2. Service on at least two of the Board Committees or GTF
3. Disqualified for one year after end of participation on nominating committee

III. Option B: Vice Chair selection rotated among Board members, according to their Appointing Authority Status

A. Process:

1. Current Board selects Vice Chair, rotated amongst the Appointing Authorities, starting with Chief Justice, then Senate, then Assembly, then Governor; and then the rotation begins anew.
2. The Appointing Authority has 60 days from the Board's July meeting to select the Vice Chair; if no Vice Chair is selected, current Chair makes selection.
3. If Vice Chair leaves office early, replacement governed by same rules; Appointing Authority selects replacement immediately and if Appointing Authority fails to do so, Chair selects replacement.

IV. Option C: Vice Chair nomination by Ad Hoc Nominating Committee with composition controlled by outgoing Chair

A. Composition:

1. Three Trustees: Outgoing Chair plus two Trustees selected by outgoing Chair
2. Selected trustees must have served on Board for less than three years
3. No member of nominating committee is eligible to serve as officer while on the nominating committee.

B. Process: Nominating Committee nominates one to three Trustees for full Board consideration as Vice Chair

4. Filling of Vacancies

GTF's task is to make a recommendation regarding the filling of vacancies.³

C. Topic C – Board Committee Structure

At the Topic C meeting, GTF reviewed and discussed the structure, size, composition and function of each of the Board's committees:

- Executive Committee (ExCom)
- Regulation and Discipline (RAD) Committee
- Admissions & Education (A&E) Committee
- Stakeholders Relations, Access to Justice, and Appointments Committees (SA&A)
- Audit Committee
- Planning and Budget (P&B) Committee

In addition, GTF reviewed and discussed the Board's Liaison Policy.

No final decisions were made by GTF regarding Board committees as GTF's review of the State Bar sub-entity structure was viewed as more pressing. Issues which remain for consideration include the types of Board committees needed, the manner in which Board committees operate, the size and composition of the Board committees, the method of selection

³ By B&P Code section 6013.1, the Supreme Court has authority to fill vacancies in seats appointed by the Supreme Court.

of the Chairs and Vice-Chairs, the qualifications for such appointments, and the appointment process. While GTF believes that further study and analysis is required by the full Board, GTF identified the following eight sets of committee-specific questions for its own further consideration:

1. ExCom: Determine whether to maintain the current composition consisting of Officers, Board committee chairs and a trustee appointed by each of the appointing authorities.
2. RAD: Determine whether the Board should create two RAD administrative subcommittees, operations and administration, for improved functioning; and determine whether the Board should incorporate certain RAD agenda items into the full Board agenda.
3. A&E: Determine the extent to which State Bar will be carrying out an education function; determine the contours of a post-Sections, public protection and ethics focused education function; determine whether the licensing function merits its own oversight committee given the diversity, range and volume of the admissions workload; if licensing merits its own committee, determine whether to pull education from A&E and professional competence (rules promulgation and interpretation) from RAD to form a new Ethics and Education (E&E) committee.
4. SS&A: Determine whether to replace the current committee with two committees, one for Appointments and one for Access to Justice; determine whether to instead replace it with one for Access to Justice and subsume Appointments within the Executive Committee.
5. P&B: Determine whether to replace the current committee with two committees, one for Finance (to review financials as distinct from the governance and oversight function of the Audit Committee) and one for a newly-envisioned Budget and Strategic Planning committee tasked with year-round strategic planning and program development.
6. Liaison Policy: Determine whether to eliminate the policy, under which individual Board members are assigned as liaisons to various sub-entities and instead assign that role to the appropriate Board committees.
7. GTF: The GTF structure creates a unique and valuable opportunity for focused discussions on complex governance issues. The problem, however, is that it is not integrated into ongoing Board activities. Converting GTF into a standing committee of the Board would avoid the proliferation of Board committees, make governance reform part of the regular business of the Board and integrate governance reform into the strategic planning process in a more orderly and timely manner. Determine whether to convert GTF into a standing committee that is merged with P&B. Determine whether to recommend that the GTF statute be sunset.
8. Determine whether the committee charters should be updated.

GTF's task is to advance as many of these issues as possible to recommendations. To help in your deliberations concerning Board committee structure, we have included a copy of a

chart prepared for the Topic C meeting, enclosed as **Attachment C, Board Committee Structure**.

New Items

During GTF discussions, State Bar Executive staff have identified the following additional items, yet to be formally included in the GTF discussion agenda.

A. Non-Sections, Non-CYLA Awards Policy for 2018 and Beyond

Please consider Leah Wilson's Board Agenda Item regarding the 2017 State Bar Awards prepared for the March 2017 Board meeting, enclosed as **Attachment D, March 2017 Board Agenda Item: 2017 State Bar Awards**

B. The Executive Director has noted the following questions:

1. Would the Bar benefit from an Inspector General or permanent inside audit function? How would this impact other audit activities? Should the State Bar consider creating an ethics, fraud and abuse hotline?

Staff Recommendation is to refer this issue to the Audit Committee.

2. Should a specific committee take responsibility for personnel, hiring, recruitment, staff and leadership development, succession planning?

Staff Recommendation is to refer this issue to the ExCom.

3. Where should performance management and outcome measures (beyond the backlog standard for the Office of Chief Trial Counsel) be addressed?

Staff recommendation is to refer this issue to the ExCom.

4. Is there a need to establish an organizational and Board entity that is responsible for proactive public protection?

Staff recommendation is to refer this issue to the A&E Committee.

2017 GTF Report

Given the relatively recent issuance of the last GTF report in August 2016, staff views the 2017 GTF Report as supplementary in nature. The thought is to provide an update on the ongoing Board-directed restructuring and efficiency initiatives arising out of the 2016 GTF Report and then to set forth the new recommendations arising out of the Topic A, B and C discussions. GTF's study of the State Bar's sub-entity structure is likely to be a major focus. Complementary to GTF's comprehensive review of the sub-entities is Dr. Elise Walton's

comprehensive review of the State Bar's organizational design. A theme that emerges is that the State Bar has been presented with a unique opportunity in time to prioritize around its core discipline and non-discipline public protection functions; and to create an organizational, governance and committee structure that effectively carries out those functions. Staff hopes to build on this conceptual framework for the 2017 GTF Report.

Staff looks forward to receiving GTF's input to aid in the drafting of the 2017 GTF Report.