

AGENDA ITEM

162 MAY 2017

DATE: May 4, 2017

TO: Members, Stakeholders, Access to Justice, and Appointments Committee
Members, Board of Trustees

FROM: Michael G. Colantuono, Chair, Stakeholders, Access to Justice and
Appointments Committee

SUBJECT: Proposed Amendment of Disclaimer Language for Legislative Letters

EXECUTIVE SUMMARY

Current Board policy requires that legislative comments of sections and committees bear a disclaimer providing that the stated position has not been adopted by the State Bar's Board of Trustees "or overall membership." This Agenda Item proposes amending the required disclaimer language to strike "or overall membership." This amendment would make the point that the State Bar is a regulatory agency created by statute under the California Constitution to regulate the practice of law, and not a membership association.

DISCUSSION

As the Trustees know, the Bar's use of the proceeds of mandatory fees imposed on those licensed to practice law in California is limited by First Amendment principles applied in the *Keller* and *Brosterhous* cases. These have limited the Bar's legislative activities to those closely associated with the Bar's regulatory mission or those funded other than by the proceeds of mandatory dues. While various committees, sections and other bodies of the Bar make non-partisan and non-political comments on proposed legislation and court rules to aid the administration of justice and our legal system, Board policy requires such comments to bear a disclaimer to make clear that they do not speak for the Bar as an institution unless this Board specifically determines otherwise.

Tab 3.5 of the Board Book in Article 2, section 5 states three versions of the disclaimer for various entities of the Bar. The three largely track this language:

This position is only that of the State Bar of California's [STANDING COMMITTEE ON]. This position has not been adopted by the State Bar's Board of Trustees ~~or overall membership~~, and is not to be construed as representing the position of the State Bar of California.

I recommend that we amend these disclaimers to strike the language shown in ~~strikeout~~ text above (“or overall membership”). This is consistent with our proposal that the Legislature amend the State Bar Act to change references to “dues” and “members” to “license fees” and “licensed attorneys” and makes the point that the Bar is a regulatory agency, not a membership association. Referring to the “overall membership” suggests that members of the Bar are a source of authoritative pronouncements of Bar policy, as is true in democratic professional associations. We are not such an association, but a regulatory agency created by statute under the California Constitution to regulate the practice of law.

It is especially important that our communications with the Legislature reflect our understanding of this fact and not imply that the members of the Bar are a source of Bar policy. Bar policy is made by the Board of Trustees under the guidance of the Supreme Court and within constraints adopted by the Legislature.

For all of these reasons, I propose that the Board amend the required disclaimer language for legislative letters.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK IMPACT

Tab 3.5, Article 2, Section 5

BOARD COMMITTEE RECOMMENDATIONS

The Stakeholders, Access to Justice, and Appointments Committee recommends that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees hereby adopts the amendments to the required disclaimer language on legislative positions taken by State Bar entities, as contained in Attachment A hereto.

ATTACHMENT(S) LIST

- A. Proposed Amendment of Disclaimer Language for Legislative Letters