

AGENDA ITEM

III.G. JULY 2017

DATE: July 13, 2017

TO: Members, Regulation and Discipline Committee
Members, Board of Trustees

FROM: Dag MacLeod

SUBJECT: Governance in the Public Interest Task Force Recommendations: Appendix I, Sub-Entity Review; and Changes to Committee Structure

EXECUTIVE SUMMARY

The Governance in the Public Interest Task Force (Task Force) submitted its third report to the Legislature on May 15, 2017. The report included recommendations related to the role and structure of Board Committees and also to the review of sub-entities of the State Bar that fall within the competence of RAD.

This report provides a summary of the recommendations contained within the Task Force report and a draft template for review by the Committee on Regulation and Discipline (RAD). The template is intended to provide a framework of analysis for addressing recommendations related to the review of sub-entities contained in Appendix I of the Task Force Report. Committee members are being asked to review and approve this addition to the Work Plan.

BACKGROUND

The Task Force submitted its third report to the Legislature on May 15, 2017. The report included recommendations related to role and structure of Board Committees and also to the review of sub-entities of the State Bar that fall within the competence of RAD.

The recommendation related to the role and structure of RAD is found on page 21 of the report and reads as follows:

Address problems posed by the RAD Committee's current 'committee of the whole' structure, such as by creating two RAD sub-committees, one to address issues of administrative policy and the other to address operational issues.

The Executive Committee's July 13 agenda includes an item to address Task Force recommendations and Board Book changes. The Executive Committee is expected to refer the question of dividing RAD into two sub-committees to RAD for further consideration. Any

changes to the Board Book related to this recommendation would be put on hold pending consideration and finalization of a decision by RAD.

Additional recommendations of the Task Force for RAD are found in Appendix I of the report and relate to the evaluation of sub-entities. The recommendations are summarized below followed by a draft analytic framework to guide the work of RAD. This same framework will be presented to the other Board Committees named in Appendix I with the goal of ensuring uniformity and analytic coherence in the continued review of State Bar sub-entities.

The sub-entities reviewed in the Task Force report for which RAD has responsibility include:

- The Client Security Fund Commission
- The Committee on Mandatory Fee Arbitration
- The Lawyer Assistance Program Oversight Committee

DISCUSSION

Appendix I of the Task Force report raised the following questions:

Client Security Fund (CSF) Commission

After affirming the value and importance of the CSF to the Bar's public protection mission, the Task Force report asked:

- Should the CSF Commission be a subcommittee of RAD to clarify reporting relationships?
- Is there work performed by the CSF Commission that should be performed by State Bar staff?
- If current work of the CSF Commission is transferred to staff, how would that be funded?
- If current work of the CSF Commission is transferred to staff, should the size of the Commission be reduced?

The Task Force concluded this discussion of the CSF by recommending that the matter be referred to RAD for further study.

Committee on Mandatory Fee Arbitration (MFA)

As with the CSF, the Task Force affirmed that the MFA is a valuable and important component of the Bar's comprehensive discipline system. Unlike the section on the CSF, the Task Force report had specific information regarding the work of the MFA Committee that allowed it to provide preliminary recommendations regarding functions that may, appropriately, be assigned to Bar staff rather than the Committee. These functions include:

- Modification of training materials;
- Updating arbitration awards;
- Making public comment on and tracking change in the law;
 - Tracking changes in case and statutory law;
 - Monitoring pending legislation and court cases;
 - Preparing proposed legislation to conform to case authorities.
- Training of local bar staff;
- Enforcement of awards;
- Updating program materials (notices, sample fee agreement forms, guidelines, etc.);
- Local bar rule changes;

- Updating case summaries.

As with the CSF recommendation, the section of the Task Force report on the MFA went on to refer the matter to RAD for further study in collaboration with MFA Committee members and stakeholders as appropriate.

Lawyer Assistance Program (LAP) Oversight Committee

Without calling the goals of the LAP into question, the Task Force report identified two issues related to the LAP for further evaluation. The first question has to do with whether the LAP is “appropriately situated within the State Bar.” For a number of reasons, the Bar may not be the proper home for the LAP. Those reasons include the fact that attorneys may be less likely to seek help for substance abuse and mental-health related problems *because* of the close association between the Bar and the LAP.

The second question posed by the Task Force regarding the LAP has to do with the relationship between the Board and the LAP Oversight Committee. The Task Force report indicates that the LAP Oversight Committee is not well integrated into the State Bar’s organizational structure nor are its activities actively overseen by the Board.

The Task Force report concludes its discussion of the LAP Oversight Committee by referring the questions to RAD for further study.

Analytic Framework for Evaluation of Task Force Recommendations Regarding Sub-Entities

To provide the Board and its committees with a relatively uniform and coherent framework for evaluating the sub-entities, Bar staff propose the following template for information gathering.

For each sub-entity referred to a Board committee for further evaluation, the following information should be gathered on the template provided below.

- A comprehensive inventory of the sub-entities functions, the work performed, and the division of labor between the oversight body and Bar staff;
- The workload required for the entirety of the work performed by the sub-entity and staff (calculated as Full-Time Equivalent (FTE) staff);
- A list of statutes and rules that dictate the composition of the sub-entity and the work that it performs.

Using this information, Bar staff should conduct an analysis and report back to each Board committee on the following:

- whether the work is consistent with the public protection mission of the State Bar (in some cases this question has already been answered by the Task Force);
- the potential benefits of transferring some the sub-entity’s functions to State Bar staff or to some other, external, contracted entity;
- the potential costs of transferring some of the sub-entity’s functions to State Bar staff or to some other, external, contracted entity;
- whether a different division of labor between the oversight body and State Bar staff would improve the functioning of the sub-entity.

Name of Sub-Entity _____			
Functions of the Committee, Bar Staff, and Others If Applicable	Estimated FTE	Could This Work Be Done by Bar Staff or Others?	Statutes & Rules Governing Organization of Sub-Entity
Function1: Tasks: Frequency:			
Function2: Tasks: Frequency:			
Function3: Tasks: Frequency:			
Function4: Tasks: Frequency:			
Function5: Tasks: Frequency:			
Function6: Tasks: Frequency:			
Function7: Tasks: Frequency:			
Function8: Tasks: Frequency:			

FISCAL/PERSONNEL IMPACT

Minimal additional work for Bar Staff and Sub-Entities to compile information and conduct analysis.

RULE AMENDMENTS

Not applicable.

BOARD BOOK IMPACT

Tab 2.5, Board Committees and Task Forces, and 5.1, Standing and Special Committees

BOARD GOALS & OBJECTIVES

2017-2022 Strategic Plan, Goal 1: “Successfully transition to the “new State Bar”— an agency focused on public protection, regulating the legal profession, and promoting access to justice.”

Objective a: “Determine whether additional State Bar functional areas will transition to the Sections entity, other organizations, or to new standalone entities.”

BOARD COMMITTEE RECOMMENDATIONS

Staff recommends that the Committee on Regulation and Discipline approve the following resolution:

RESOLVED, that the Committee on Regulation and Discipline amend its Work Plan to include the Governance in the Public Interest Task Force recommendations contained in Appendix I as specified above.

ATTACHMENT(S) LIST

- A. Governance in the Public Interest Task Force Report, Appendix I