

## APPENDIX I

### REVIEW OF SUB-ENTITIES: BACKGROUND AND RECOMMENDATIONS

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### **Review of Sub-Entities: Background and Recommendations**

#### *Committee of Bar Examiners (CBE)*

Background: CBE is legislatively directed to:

- Examine applicants for admission to practice law; administer admission requirements; and certify applicants meeting the admission requirements to the Supreme Court. These responsibilities include:
  - Determining eligibility of applicants for admission including whether an applicant possesses good moral character requisite to the practice of law;
  - Developing and administering the bar examination; and
  - Determining appeals from administrative denial of test accommodations.
- Accredited, regulate and oversee non-American Bar Association accredited California law schools.
- Register, regulate and oversee unaccredited law schools in California.

CBE is a working committee, responsible for administering the admissions process, although the Supreme Court retains ultimate authority for admissions.<sup>1</sup> CBE is an advisor to the Supreme Court,<sup>2</sup> aiding the Court in deciding on admissions to the Bar.<sup>3</sup> CBE's workload is large, diverse and significant; its moral character workload alone is substantial.

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<sup>1</sup> "Upon certification by the examining committee that the applicant has fulfilled the requirements for admission to practice law, the Supreme Court may admit the applicant as an attorney at law in all the courts of this state and may direct an order to be entered upon its records to that effect." (B&P Code, § 6064.) "Any person refused certification to the Supreme Court for admission to practice may have the action of the board, or of any committee authorized by the board to make a determination on its behalf, pursuant to the provisions of this chapter, reviewed by the Supreme Court, in accordance with the procedure prescribed by the court." (B&P Code, § 6066.)

<sup>2</sup> The court in *Levanti v. Tippen* (1984) 585 F.Supp. 499, 504 held:

Admission to the practice of law in California is an exercise of the inherent judicial power of the California Supreme Court. Cal. Bus. & Prof. Code §§ 6064-6066. The State Bar of California is a constitutional agency established as a public corporation in the judicial branch of government. Cal. Const. Art. VI, § 9; Cal. Bus. & Prof. Code § 6001. As such, the State Bar is an arm of the California Supreme Court which assists that court in the judicial function of bar admissions. See *Emslie v. State Bar*, 11 Cal.3d 210, 224, 113 Cal.Rptr. 175, 520 P.2d 991 (1974); *Brotsky v. State Bar*, 57 Cal.2d 287, 300-01, 19 Cal.Rptr. 153, 368 P.2d 697 (1962). Likewise, the Committee of Bar Examiners is established pursuant to state law, Cal. Bus. & Prof. Code §§ 6046, 6064, to operate as an administrative arm of the California Supreme Court. *Chaney v. State Bar*, 386 F.2d 962, 966 (9<sup>th</sup> Cir. 1967); 57 Ops.Cal. Att'y Gen. 583, 584 (1974). ... [CBE] is specifically authorized to determine the form and content of the bar exam, including the passing score and the standards and methods of grading. Cal. Bus. & Prof. Code §§ 6046, 6047, 6060(f), 6060(g), 6062(d). The Committee certifies applicants for admission to the California Supreme Court, but such a recommendation is purely advisory, *Chaney v. State Bar*, *supra*, 386 F.2d at 966, and like all other decisions of the Committee is subject to review by the California Supreme Court. Cal. Bus. & Prof. Code § 6066.

<sup>3</sup> The California Supreme Court in *In re Garcia* (2014) 58 Cal.4<sup>th</sup> 440, 451-452, 446, 465, and footnote 11 held:

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The Board's role in the admissions process is limited. Created by statute, the 19 member CBE includes 10 Board appointed positions, three positions appointed by the Governor, and the remaining six by the two Legislative Houses.<sup>4</sup> The Board, in establishing the budget for the entire State Bar, determines the operating costs for CBE itself as well as all the staff that support CBE. The Board also fixes application fees payable by applicants for admissions, approves CBE's rules and regulations, and may initiate investigations into admissions matters, but has no power to administer the admissions process, which by statute resides with CBE subject to the Supreme Court's ultimate authority over admissions.

The 2017 Governance in the Public Interest Task Force (Task Force) noted the Board's limited engagement in CBE's work, and the appearance that CBE acts independently, perhaps on account of its statutory authority, in matters that should come to the Board's attention, such as public statements made on behalf of the State Bar and important policy considerations with significant implications on the State Bar's exercise of its licensing responsibilities. The Task Force recommended strengthening the Board's relationship with CBE. The Task Force also noted CBE's large volume of work and range of functions, some arguably more suited for staff or outside entities. For example, a professional accreditation agency may handle better CBE's law school accreditation function; similarly, staff may be positioned better to review various administrative processes (e.g., examination refund requests). Reducing CBE's administrative workload would make time and resources available for broader policy issues.

Accordingly, the Task Force recommends that the A&E Committee take the following action:

- Better define CBE's relationship with the Board.
- Develop a plan for meaningful engagement between CBE and the Board.
- Study the feasibility and desirability of outsourcing the law school accreditation function.
- Study the feasibility and desirability of having State Bar staff perform certain functions currently performed by CBE.

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Although both the Legislature and this court possess the authority to establish rules regulating admission to the State Bar, under the California Constitution this court bears the ultimate responsibility and authority for determining the issue of admission. ... [CBE is] the entity within the State Bar ... that administers the California bar examination, investigates the qualifications of bar applicants, and certifies to this court candidates it finds qualified for admission to the State Bar ... [CBE] makes an initial [moral character] determination, on a case-by-case basis, whether an applicant has met his or her burden of establishing good moral character, but this court retains the authority to independently review and weigh the evidence or moral fitness and to make the ultimate determination whether the applicant has satisfied this requirement. ... [CBE] makes recommendations to this court regarding the admission of individual applicants (Bus. & Prof. Code, § 6046), but this court makes the ultimate decision on admission pursuant to the court's constitutional authority over the practice of law in California. (See, e.g., *Brydonjack v. State Bar* (1929) 208 Cal. 439, 445-446, 281 P. 1018.)

<sup>4</sup> "The board may establish an examining committee ... ." (B&P Code, § 6046.)

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The statutory authority governing CBE's responsibilities combined with the Supreme Court's ultimate authority over admissions makes imperative that the A&E Committee confer with the Legislature and the Supreme Court to obtain their views on these areas of concern. CBE's unique relationship to the Supreme Court requires careful coordination with the Court on any study, endeavor or initiative to reform the role of the CBE in the admissions process or in the regulation of law schools.

Recommendation: Refer to the A&E Committee for further study, as outlined above.

### *Law School Council*

Background: CBE is statutorily required to communicate and cooperate with this council on the content and format of the bar examination, and law school education and curriculum relating to the bar examination process. The council is composed of law school deans appointed by the Board, CBE appointees and the chair of the A&E Committee. It functions as a de facto advisory body to the CBE designed to facilitate communication between the legal education community and the State Bar, and is convened upon request by CBE. The Task Force recognizes the importance to the State Bar of maintaining a formal relationship with law schools, but the current mechanism is of limited benefit. No mention of the council appears in the Board Book, and there is no explicit Board oversight mechanism to ensure that the Board knows what the council does or whether it is performing its function effectively. A better conceptualization of the role of the council is needed, formally bringing the council within the State Bar organizational structure as a CBE advisory committee. The A&E Committee should consider, with advice from General Counsel, such realignment. In the meantime, given the statutory requirement for communication and cooperation between CBE and the council, the Board should continue council appointments.

Recommendation: Refer to the A&E Committee for further study, as outlined above.

### *California Board of Legal Specialization (CBLS)*

Background: The Supreme Court adopted a rule directing the State Bar to establish and administer a legal specialization certification program. CBLS has functional oversight responsibility for the State Bar's program, which certifies legal specialists in 11 areas of law, assisted by an equal number of specialty advisory commissions in the respective substantive areas covered by legal specialization exams. Each advisory commission is responsible for reviewing applications for certification, and drafting and grading the specialty examinations in its specialty area. The advisory commissions are responsible to CBLS; the Board of Trustees has historically appointed members to both CBLS and the advisory commissions.

At its November 18, 2016, meeting, the Board directed staff to work with the SS&A Committee to modify the appointments process for the 11 advisory commissions. As modified, the advisory commission members will be appointed, and officers selected, by CBLS, not the Board, thus folding the advisory commission function into the overarching umbrella of CBLS and

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eliminating 11 separate sub-entities subject to direct Board appointment and oversight. The change in the appointment process will result in a reduction in Board time spent on appointments, and also in a reduction in staff time spent on preparation of Board agenda items. The addition of paid specialty examination drafters and graders, a new program feature being initiated this year, will reduce the workload of the advisory commissions. CBLS will revisit whether the advisory commissions can be reduced further in size and/or meet less frequently in light of this workload reduction.

There were differing views whether the legal specialization certification program serves a public protection function, or primarily is a benefit to attorneys in the development of their law practices. No conclusive determination was made, but various alternative models for performance of the legal specialization certification program were discussed. One idea is to reposition the function outside the State Bar in a separate independent entity. Another model would have the State Bar retain the regulatory function of reviewing the legal specialization certification process and certifying the entities that certify legal specialists. Yet another idea would bring the legal specialization certification function in-house to be performed by State Bar staff with the assistance of consultants, eliminating the need for CBLS. The Task Force believes that further study is needed to assess this question; that study should be timed to have the benefit of the results of the transition of advisory commission appointments to CBLS, as well as the introduction of paid exam developers and graders. Given that this program area was created by Supreme Court Rule, the Supreme Court's views on the Task Force's areas of concern should be obtained as a first step in any future study.

Recommendation: Refer to the A&E Committee for further study, as outlined above.

### *Client Security Fund (CSF) Commission*

Background: The Commission oversees and administers the CSF, a legislatively created victim restitution program, and decides whether to grant or deny applications for reimbursement. This entails a large volume of work. State Bar staff reviews the applications and makes recommendations to the Commission. Although the value and importance of this legislatively-created program to the State Bar's public protection mission is clear, it raises the following questions:

- Should the Commission be a subcommittee of RAD, so that the reporting relationships are clearer, with ultimate oversight responsibility vested in the Board?
- Is there other work that can be brought in-house to be performed by State Bar staff?
- If current work is transferred to staff, how will that be funded?
- If current work is transferred to staff, should the size of the Commission be reduced?

Noting that the Chief Justice instructed the State Bar to ensure CSF's "adequacy and operational efficiency," the Task Force recommends that RAD consider possible measures to increase the

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timeliness of payments to applicants with qualifying claims. The Task Force notes that the Board does not set CSF funding, which is mandated by statute, but that further work should be done to communicate the need for increased CSF funding.

Recommendation: Refer to the RAD Committee for further study, as outlined above.

### *Committee on Mandatory Fee Arbitration (MFA)*

Background: Fee disputes are the source of many disciplinary complaints; as a result, the Supreme Court considers the State Bar's MFA program to be an appropriate part of the State Bar's comprehensive discipline system. The State Bar's MFA program alleviates the burden on the court system by providing an alternative forum for resolution of fee disputes at the client's request. Ninety percent of cases that go to arbitration are resolved in that forum.

Concerns were raised regarding the risk that some local voluntary bar associations may decide they are no longer able to support the MFA program, and the effect that would have on State Bar staffing. Also, while the MFA program is a critical component of the State Bar's discipline system, questions arose as to the size and scope of the Committee, especially as related to the distribution of work between the Committee and MFA program staff.

The Committee is responsible for reviewing policies on fee arbitrations, assisting local bar association arbitration programs, issuing advisories, and evaluating and proposing legislation. Some of this work is dependent on the unique skills and abilities of Committee members who are often experts in the field of arbitration. Other aspects of the work, however, may be more administrative in nature, suitable for delegation to State Bar staff. A staff review of Committee functional responsibilities indicates that the following tasks may be appropriate for staff, as opposed to the Committee, to perform:

- Modification of training materials
- Updating arbitration awards
- Making public comment on and tracking changes 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

The Task Force recommends that RAD study this program area further, conferring with Committee members, staff and stakeholders as appropriate. The above description of potentially delegable work, already completed by staff, will offer a starting point. Depending on the portion

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of current work the Committee ultimately will continue to handle, a further review of the required structure and size of the Committee should also be undertaken.

Recommendation: Refer to the RAD Committee for further study, as outlined above.

### *Lawyer Assistance Program (LAP) Oversight Committee*

Background: In providing comprehensive and confidential assistance to attorneys who abuse alcohol or drugs or suffer from mental illness, LAP helps attorneys address problems with potential negative impact on client representation. The program serves the following four distinct populations:

- Attorneys who voluntarily self-refer into the program.
- Attorneys referred into the program from the disciplinary system.
- Applicants for admission referred into the program from the Committee of Bar Examiners as part of the moral character approval process (currently not covered by statute, they must be funded from non-LAP sources).<sup>5</sup>
- Applicants for admission who voluntarily self-refer into the program to avoid problems in the moral character approval process proactively by addressing substance abuse or mental illness issues lest they interfere in obtaining a license to practice law.

LAP relies on State Bar staff who are licensed clinicians to assess and develop case plans for participants. The LAP Oversight Committee may establish one or more three-member Evaluation Committees in northern and southern California, each consisting of a physician, clinician and a local State Bar member experienced in recovery. Evaluation Committees are authorized to accept or deny applications for admission to LAP; to determine completion of the program; and to terminate individuals from the program. The State Bar contracts with licensed medical health professionals in northern and southern California to facilitate weekly group meetings and monitor the recovery of participants. Notwithstanding the statutory role performed by the Oversight Committee in overseeing the operations of this program, the Board performs its own oversight role, which historically has been limited in scope. The Board appoints half of the 12 Oversight Committee members, who regularly report to the Board. On March 12, 2017, the Board approved the Oversight Committee's three-year strategic plan pursuant to Workforce Planning recommendations.<sup>6</sup>

Two issues emerged in Task Force discussions. The first centered on whether LAP is appropriately situated within the State Bar. The program goal is not in doubt, but the State Bar

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<sup>5</sup> The State Bar hopes to change the LAP statutory scheme to permit funding of applicants for admission.

<sup>6</sup> Immediately after the Task Force's discussion about LAP, the Oversight Committee presented a three-year Strategic Plan to RAD, focused on outreach (particularly to law schools and recent graduates), education, messaging and efficacy. The Oversight Committee agreed to develop a timeline for implementing the strategic plan and also agreed that physical separation from the State Bar could help to increase participation.

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lacks expertise in matters of substance abuse and mental illness, making it an unusual host. Moreover, concerns have been raised that attorneys might be disinclined to seek assistance from the same entity responsible for attorney discipline, a concern that may explain LAP's low attorney participation rate.<sup>7</sup> A review of other state practices also suggested that many jurisdictions have chosen to structure their parallel programs as separate entities from the regulatory body precisely because of these types of concerns. The direct relationship between LAP and the discipline system, particularly as related to the direct diversion role it plays for some attorneys appearing before State Bar Court, could be a counter to arguments for separation of the program; this perspective suggests that the State Bar has a responsibility to ensure appropriate quality control of the services being provided and can best do so if LAP is part of the State Bar proper.

Additional Task Force discussion centered on the role of the program's statutory Oversight Committee and the role it plays as related to both Board oversight and program integration with the State Bar's organizational structure.

RAD should determine whether LAP should be retained within the State Bar and, if so what the relationship there should be between the Board and the Oversight Committee to RAD. Also, RAD should develop specific directives to advance the two primary components of the LAP Strategic Plan, education and program design. It is noted that LAP, its Oversight Committee and its funding are set by statute; change in its operational or governance structures, whether by transitioning the work to an independent entity to perform or by modifying the role of the Oversight Committee, will require legislation. The Task Force proposes that RAD study these issues in light of the recently adopted LAP strategic plan and that it do so by conferring with the Oversight Committee, the State Bar Court, staff, and other stakeholders.

Recommendation: Refer to the RAD Committee for further study, as outlined above.

### *Commission (2<sup>nd</sup>) for Revision of Rules of Professional Conduct*

Background: The commission concluded a two year comprehensive review and overhaul of the California Rules of Professional Conduct on March 31, 2017; the proposed rules have been approved by the Board for submission to the Supreme Court for its consideration and final approval. The appropriateness and importance of the commission's work to the State Bar, characterized by the Supreme Court as a component part of a comprehensive discipline system, is beyond question. The Board approved retaining a 'skeletal' group of commission members, should issues arise during the Supreme Court's review of the rules. TASK FORCE recommends no further action.

Recommendation: Closed.

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<sup>7</sup> Space demands in the State Bar's Los Angeles office may require LAP to relocate into separate quarters, potentially offering an opportunity to assess the impact of relocation on participant census.



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### *Committee on Professional Responsibility and Conduct (COPRAC)*

Background: COPRAC is responsible for interpreting the ethical rules governing the legal profession and issuing advisory opinions to interpret the California Rules of Professional Conduct and related authorities. The work of COPRAC falls within the State Bar's competence function, which, as noted above, the Supreme Court has characterized as an appropriate part of a comprehensive discipline system. The Task Force discussed whether constitutional and antitrust issues might be implicated by COPRAC's advisory opinions. The Task Force concluded that review of COPRAC opinions by the Office of General Counsel would be sufficient to identify and resolve such issues, should they arise.

Recommendation: Closed.

### Judicial Candidate Nominations Sub-Entities

- *Commission on Judicial Nominees Evaluation (JNE)*
- *Judicial Nominees Evaluation Review Committee (RJNE)*

Background: JNE is a legislatively created program to evaluate candidates being considered for judicial appointment by the Governor. By statute, the State Bar is required to report to the Governor in confidence its recommendation as to whether candidates are qualified for judicial office. State Bar Rules also establish an appeals process to allow candidates JNE finds unqualified for judicial office to seek reconsideration by RJNE. The Supreme Court's 2016 regulatory fee assessment order declined to fund these two committees as not related to discipline, but stated that both programs serve an important non-discipline public protection function, and encouraged the State Bar to find an alternative funding source. Notwithstanding the Board's appointment authority, by statutory design the Board's oversight of this program is minimal in order to preserve confidentiality and direct reporting to the Governor. Board involvement is thus limited to annual reporting to the SS&A Committee. The Task Force recommends no further action.

Recommendation: Closed.

### Access to Justice Committees

- *Committee on Delivery of Legal Services (SCDLS)*
- *California Commission on Access to Justice (CCAJ)*
- *Legal Services Trust Fund Commission (LSTFC)*
- *Council on Access and Fairness (COAF)*

Background: SCDLS, CCAJ, LSTFC and COAF are the State Bar sub-entities focused on access to justice and diversity/inclusion goals and objectives. The work of these sub-entities is central to the State Bar's responsibility for promoting access to justice, diversity, and inclusion and

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participation in the legal system, so that all Californians, but particularly those who are low-income or indigent, might have a means to secure representation for resolution of their legal disputes and meaningful access to the courts.

State Bar support for a program of collaborative strategies and initiatives to achieve access to justice was accomplished by the Board in November 2006 when it took formal action to establish the CCAJ. Although the Supreme Court's 2016 regulatory fee assessment order did not fund CCAJ or the Center on Access to Justice (the State Bar office within the Office of Legal Services that supports CCAJ), the Chief Justice, in her letter accompanying the order, made clear that CCAJ and the Center serve important non-discipline public protection functions and are part of the Bar's overall public protection mission.<sup>8</sup> The Court encouraged the State Bar to find alternative sources of funding in the 2017 non-Fee Bill year.

Board-directed restructuring effective December 31, 2017, will incorporate the work of SCDLS into CCAJ for greater organizational efficiency. Thus, no further appointments will be made to SCDLS, and its projects will either be completed this year, or taken over by CCAJ. The Board has reserved the question whether to create two additional seats on the CCAJ and, if so, the appointing authorities for each, in light of the integration of the two sub-entities.

The Task Force identified two additional issues. First, a determination should be made as to whether the remaining sub-entities, LSTFC and COAF, should be merged into CCAJ or converted into subcommittees of CCAJ. The Senior Director from the Office of Legal Services explained that, unlike SCDLS, LSTFC serves a very specific and limited function in the administration of State Bar grants to non-profit legal services providers, which entails a large volume of work. SCDLS and CCAJ share a common broader focus on public policy creation. That commonality supports consolidating their respective functions. COAF also works at the public policy level, but with a focus on inclusion and diversity, which might be diluted, were COAF to be consolidated with other sub-entities.

The second issue raises the question of whether CCAJ and its operational independence from the Board since its creation 20 years ago may require further clarification. CCAJ is a unique sub-entity. Created by Board resolution to implement one of the recommendations contained in *And Justice for All*, the final published study of the Access to Justice Working Group, it was designed to convene broadly representative groups who could determine the best strategies for improving and supporting access to justice initiatives. CCAJ operates "under the auspices of," but with substantial autonomy from the Board. CCAJ has many diverse appointing authorities (e.g., Judicial Council, Supreme Court, Chamber of Commerce, League of Women Voters, Council of

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<sup>8</sup> The Supreme Court simply questioned, without deciding, its own constitutional authority to order an assessment that extended to non-discipline public protection functions of the State Bar. It did not question the Legislature's authority to do so, as it has done historically. The United States Supreme Court held that the State Bar may constitutionally fund activities germane to regulating the legal profession and improving the quality of legal services out of the mandatory dues of all members. (*Keller v. State Bar of California* (1990) 496 U.S. 1, 13–14.)

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County Law Librarians, etc.). The structural goal is to allow them to collaborate freely and speak with one *independent* voice. With 26 members, only 10 named by the Board, the appointing authorities historically have considered themselves to be “partners” in access to justice initiatives, not a sub-entity, subordinate to the State Bar. Nonetheless, CCAJ reports out its initiatives to the Board on an annual basis and is funded out of State Bar general funds from a budget approved by the Board.<sup>9</sup> Notwithstanding the above, there is concern about the lack of Board oversight, and clarification of the roles of and relationship between the Board and the CCAJ should be considered.<sup>10</sup>

A third concern was identified in the Task Force’s review of the State Bar’s support for access to justice and diversity/inclusion programs: the Board appears to have relegated setting priorities and taking ownership of the Bar’s access to justice agenda to the CCAJ and of the Bar’s diversity/inclusion agenda to COAF, without much engagement in that process. CCAJ and COAF thus present important additional issues for broader consideration: determining how to manage the activities of sub-entities that draw their strength and effectiveness from their independence, and determining how to incorporate access to justice and diversity/inclusion goals and objectives into all aspects of the State Bar’s public protection mission. Given the clear directive from the Chief Justice and the ongoing interest in access to justice activities by the Legislature, there can be little doubt that access to justice programs, as well as diversity/inclusion programs, are valuable, help the public, and are a vital part of the State Bar’s public protection mission. While not without dissent, the Task Force majority concluded that these programs may not relate to discipline, but they are essential to public protection and must be supported by the State Bar, rather than “spun off” into a separate independent entity.

The Task Force recommends that the Board, working with LSTFC, CCAJ and COAF, develop an appropriate operating relationship to formalize the critical ongoing relationship of the State Bar with access to justice and diversity/inclusion programs. The Task Force also recommends that the Board review how all program areas might take advantage of access to justice and

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<sup>9</sup> The budget for the CCAJ’s operating costs is \$28,600. This figure does not include extensive staff time spent supporting the CCAJ. According to the ABA, as of September 2014, 32 states plus the District of Columbia have established access to justice commissions. The most common commission model is for commission staff to be located at a partner institution, usually the courts, the state bar or a bar foundation. The ABA notes that this arrangement occasionally may create complications where staff report to the commission, but are employed by the partner institution. Also the arrangement may hamper the independence of the commission. The ABA concludes that these issues can be worked through and that this model, which is used by the State Bar, has proven to be effective in guaranteeing adequate staffing and resources, which are critical to the success of access to justice commissions. (ABA Resource Center for Access to Justice Initiatives, *Staffing an Access to Justice Commission* (April 2015).)

<sup>10</sup> Recent differences of view have been voiced with regard to CCAJ’s understanding that it need not abide by the Board Book policy requiring Board approval of amicus briefs. CCAJ is strongly of the view that to be effective, operational independence is essential, notwithstanding a need for fiscal and management support by the State Bar. Some Task Force members expressed concern about CCAJ’s perception that it may act independently from the Board’s amicus policy. In SS&A’s further study of CCAJ, these differing views should be reconciled and an understanding reached so that there is a common ground going forward.

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diversity/inclusion goals and objectives so that they become an integrated part of all public protection activities.

Recommendation: Refer to the SS&A Committee for further study, as outlined above.

### Substantive Committees

- *Committee on Administration of Justice*
- *Committee on Alternative Dispute Resolution*
- *Committee on Appellate Courts*
- *Committee on Federal Courts*

Background: Responsibility for these Committees was transferred by Board action to the Litigation Section. It is the State Bar's expectation that the work of the Committees will continue on in an independent Sections entity that includes the Litigation Section, if separation of the Sections as contemplated in the 2017 Fee Bill is approved. The Task Force recommends no further action.

Recommendation: Closed.

### *California Young Lawyers Association (CYLA)*

Background: If, as anticipated, the 2017 Fee Bill transfers CYLA to the new independent Sections entity, a future relationship between the State Bar and CYLA may include collaboration on certain limited projects, to be periodically re-evaluated, which include:

- Partnering with the LAP to develop and implement an outreach and education initiative for law students and new lawyers.
- Identifying appropriate topics for new lawyer education (e.g., the new 10-hour MCLE requirement for newly admitted attorneys, effective February 1, 2018).
- Identifying, developing, and testing web-based curricula and other modes of delivery attractive to new generations of lawyers.

That State Bar's relationship with CYLA is dependent on developments in the legislative arena. The Task Force recommends no further action.

Recommendation: Closed.

### Insurance Committees

- *Committee on Group Insurance Programs (COGIP)*

Background: COGIP monitors the State Bar sponsored group insurance programs, i.e. accidental death and dismemberment, health care, life, disability income, long term care and workers compensation. Board-directed restructuring will eliminate COGIP effective May 31, 2017.

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Responsibility for COGIP insurance products, and the State Bar's affinity programs, is expected to move to the successor Sections entity if the Legislature approves the separation of the Sections as contemplated in the 2017 Fee Bill. During the transition, oversight of the administration of these insurance products and affinity programs will shift from COGIP to State Bar staff, aided by a small number of expert consultants paid from program revenue. The Task Force recommends no further action.

Recommendation: Closed.

- *Committee on Professional Liability Insurance (COPLI)*

Background: COPLI oversees the State Bar's professional liability insurance program, designed to offer attorneys insurance coverage and provide clients with recourse for malpractice. The program includes a professional liability product for newly admitted attorneys, mediators and arbitrators liability insurance, and a business office package. To the extent professional liability insurance provides clients with recourse for malpractice, retention of this insurance program can be seen as serving a public protection function. This is countered by the argument that a professional liability insurance program principally benefits attorneys. Apart from the public protection issue is the question of how best to manage and oversee the program, a matter currently under review. The review will determine whether the program should continue to be overseen by COPLI, or instead should be overseen by a differently structured committee or State Bar staff. Until this analysis is finished, COPLI will be retained in its current form and no change in program supervision will occur to ensure continuity. Once this review is complete, RAD should determine whether the State Bar's professional liability insurance program continues to be aligned with the State Bar's public protection focus; and, if so, how best to structure its oversight and management.

Recommendation: Refer to the SS&A Committee for further study, as outline above.

### **Review of External Entities**

The State Bar's annual fee statement includes voluntary contributions to the California Supreme Court Historical Society, the Conference of Delegates, the Justice Gap Fund and the California Bar Foundation. This procedure will likely be used to collect voluntary Sections' dues if they become an independent entity as contemplated in the 2017 Fee Bill. The State Bar also makes appointments to external entities, including the American Bar Association (ABA) House of Delegates, Judicial Council, Continuing Education of the Bar (CEB) Governing Committee, and Boards of Directors for legal aid organizations funded by the Legal Services Corporation. The Task Force makes no recommendation for change here.

The 2017 Fee Bill proposes that the proposed new independent Sections entity 'assume' some of the State Bar's role in making appointments to the ABA House of Delegates and all appointments to the CEB Governing Committee, subject to approval by the external entities.

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Study of these issues is underway by State Bar staff as part of the work to achieve a successful separation of the Sections if the Legislature so approves. No significant problems are anticipated.<sup>11</sup> The Task Force recommends no further action.

Recommendation: Closed.

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<sup>11</sup> State Bar staff has in fact learned that if the Sections separate, they will be entitled to their own independent ABA delegates, determined by ABA formula. These will be in addition to those the State Bar supports. Meanwhile conversations with CEB and the State Bar staff have begun. In the event the Legislature approves the separation of the Sections from the State Bar, it is anticipated that the CEB and the new independent Sections entity will enter into their own memorandum of understanding. That will be in addition to any new memorandum of understanding between the State Bar and CEB.