

# **AGENDA ITEM**

## **ITEM III E**

**DATE:** July 7, 2017

**TO:** Members, Stakeholders, Access to Justice, and Appointments Committee

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

**SUBJECT:** Proposed Board Book Revisions

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### **EXECUTIVE SUMMARY**

At the Board Executive Committee meeting on May 11, 2017, all Sections of the Board Book were assigned to the appropriate Board Committees for review. This Agenda Item contains suggested amendments to some of the Sections assigned to the Stakeholders, Access to Justice and Appointments Committee. If this Board Committee agrees with the recommendations in this Agenda Item, they will then be referred to the Office of General Counsel to work with staff, as needed, to draft the proposed Board Book amendments for proposed Board action at a later meeting. We will review further Sections at future meetings.

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### **DISCUSSION**

At the Board Executive Committee meeting on May 11, 2017, all Sections of the Board Book were assigned to the appropriate Board Committees for review. As Chair of the Stakeholders, Access to Justice and Appointments Committee, I then divided up the Sections and assigned them to individual members of this Committee, including the Chair and Vice Chair, for review. This Agenda Item contains my suggestions for policy refinement, for discussion by this Board Committee of an initial set of Board Book Sections. If there is agreement on these recommendations, we will refer them to the Office of General Counsel to work with staff, as needed, to draft proposed Board Book amendments for Board consideration at a later meeting.

The Board is also considering an extensive set of proposed amendments to Board Book Sections as related to recommendations of the 2017 Governance in the Public Interest Task Force (Task Force). That set of proposed amendments includes changes to Sections of the Board Book assigned to this Board Committee, which I also reviewed. The recommendations in this Agenda Item do not include the recommendations addressed in the Agenda Item the Board will consider in connection with the Task Force recommendations.

1. Tab 3.5, Article 2 states the policy of the Board regarding legislative proposals. It should be updated, perhaps as follows:

Section 1 Review of ~~Sections and Committees~~ Affirmative Legislation Proposals

(a) Each affirmative legislative proposal of ~~sections and~~ committees shall be delivered to staff designated by the Executive Director, either:

(1) Sixty (60) days before the meeting of the Board Programs Committee ~~on Stakeholder Relations~~, or successor committee, at which it will be submitted if it will be submitted other than at the first board meeting of the board year following the ~~organization annual~~ meeting.

(2) On or before August 1, if it is to be submitted at the first board meeting of the board year following the ~~organization annual~~ meeting to the Board Program Committee ~~on Stakeholder Relations~~, or successor committee.

The proponent shall identify a permanent contact person to whom ~~sections and~~ committees and others may direct comment. The proposal shall identify the date of the board committee meeting at which it will be submitted.

(b) Staff designated by the Executive Director shall circulate the proposal ~~to all sections, all committees, the Executive Committee of the Conference of Delegates, and the Office of Governmental Affairs~~ for comment. Any ~~section or~~ committee may request copies of all proposed amendments.

~~(c) The only exception to this rule is legislation regarding which true urgency exists, and in case of urgency, the proponent shall, when the proposal is delivered to the Board Committee on Stakeholder Relations, or successor committee, also deliver it to the Office of Governmental Affairs, the Executive Committee of the Conference of Delegates, all sections and those committees within the purview of which the proposal may fall.~~

2. Tab 3.6, Title 1, Division 2 states the Board's rules on public comment. We may want to amend Rule 1.10(B) as follows:

(B) Public comment is not required

(1) to correct clerical errors; clarify grammar; improve organization; conform to ~~specific~~ changes in ~~a~~ law; update references or citations; or make similar editorial changes;

(2) to modify a proposal that has been circulated for public comment when the board deems the modification non-substantive or reasonably implicit in the proposal; ~~or~~

(3) to add or modify an appendix to these rules; or

(4) to adopt an alternative proposal which was circulated for public comment in the previous 12 months.

3. Tab 3.7, Article 1 includes the Board policy regarding the Bar's website. It can be updated, perhaps as follows. We should discuss whether to retain paragraph (f) which views the website as a venue for advertising.

Section 1 Web Site ~~Advertising~~ Policy

It is the policy of the State Bar of California to use its Web site to meet and promote the goals of the State Bar's Long Range Strategic Plan by:

(a) providing a wide array of services and benefits to the public and attorneys to accomplish the regulatory objectives of the Bar efficiently, including service to the public and to attorneys~~members that meet their professional development, business, and personal needs;~~

(b) using technology effectively and efficiently to support all aspects of State Bar operations;

(c) ~~facilitating communication among members of the bar;~~

(d) promoting greater ~~member~~ attorney and public access to the State Bar's services;

(e) enhancing the administration of justice in California; and

(f) generating funding sources authorized by Business and Professions Code section 6001.

Advertising will be permitted on pages of the State Bar Web site related to member services and benefits, the California Bar Journal pages, and the Sections' members' pages.

An "advertisement" for purposes of this policy means any display ad, banner, logo, icon, photo, link, or text (including any hypertext link associated with any of the foregoing) representing an entity other than the State Bar, or any of its sub-entities ~~(such as Sections, boards, commissions, committees, etc.)~~, or representing a product or service of such an entity. Advertisements may be placed or permitted only on the Web site pages enumerated in this policy.

The Executive Director is authorized to develop all necessary policies and procedures necessary to implement this policy.

4. Tab 5.2, Section 3 governs locations of Bar Committee meetings. We may want to amplify it, perhaps as follows:

Section 3 ~~Use of Facilities Subject to Labor Dispute~~ Meeting Locations

Members of the staff responsible for scheduling meetings of State Bar ~~committees~~ entities ~~and sections~~ are to avoid setting the same at any institution or location which is known ~~in advance~~ to be the subject of labor picketing or a labor dispute or that would violate the requirements of the Bagley-Keene Open

Meeting Act, the Americans with Disabilities Act, or otherwise expose the Bar to controversy.

5. Tab 5.3, Article 1, Section 5 governing diverse appointments can be updated, perhaps as follows:

#### Section 5 Encouragement of Participation

(a) Participation of Diverse Members: The State Bar of California values diversity and broad-based representation in its appointments. The recruitment and selection of applicants with diverse backgrounds, experiences, outlooks, and ideas and geographical diversity brings qualities essential to the governance-regulation of the legal profession and to the services the State Bar provides to ~~its diverse members~~ attorneys and to the public.

The State Bar's Board of Trustees is committed to the active solicitation and encouragement of ~~members~~ appointees with a broad array of backgrounds and life experiences including ~~members~~ attorneys with skills or attributes that are underrepresented in the legal profession to submit applications for appointments ~~to all bar sponsored entities~~.

The State Bar provides equal access to all applicants and complies with all applicable anti-discrimination laws in its appointment process.

(b) Outreach Program: ~~In order to~~ To implement the above policy ~~objective~~, the Board of Trustees hereby encourages:

(1) Each ~~member of the Board~~ Trustee and the chair of each entity to recruit ~~and obtain~~ applicants with a breadth and depth of perspective including, but not limited to the following: gender, ethnicity, geographic location, practice area, size and type of law practice, length of time practicing, volunteer work, specific accomplishments, educational background, age, sexual orientation, veteran status, and disability for each of the entities to which the Board makes appointments.

(c) ...

(3) Provide appropriate assistance to any ~~section executive committee and any standing or special committee created by the Board~~ Bar entity to encourage applications of ~~members~~ attorneys with skills or attributes underrepresented in the legal profession.

(d) Recruitment Plan: Each ~~State Bar section executive committee and each State Bar committee and commission~~ entity shall submit an individual plan for improving the diversity of its applicant pool and report on the implementation of that plan when submitting its annual appointment recommendations.

6. Tab 5.3, Article 1, Section 6 governs application requirements and can be updated, perhaps as follows. We should discuss whether to retain provision (g)(1).

#### Section 6 Applications

Applications for appointment shall be in writing. The Executive Director or designee shall prepare a form of application to be furnished to applicants upon request and placed ~~at locations or with organizations convenient for the applicants to obtain them~~ on the Bar's website.

The application shall seek the following information:

(a) The name of the applicant.

(b) Appointment (s) ~~for which~~ the applicant ~~is applying~~ seeks.

(c) The mailing address of the applicant and daytime telephone number.

(d) The geographic location of the applicant's principal place of business ~~and State Bar District~~.

(e) The applicant's profession or vocation, the length of time in such profession or vocation and if a lawyer, ~~the member's~~ his or her State Bar number, and date of admission to the practice of law in California.

(f) The applicant's:

(1) Employment experience;

(2) Legal and general educational background;

(3) Dates of admission to the practice of law in other jurisdictions;

(4) Other business, occupational or professional licenses presently held;

(5) Areas or fields of law practice in which presently engaged;

(6) Articles or other publications authored by the applicant;

(7) Teaching activity; and

(8) Academic and/or professional honors.

(g) In addition:

(1) How the applicant became aware of the vacant position(s) to be filled:

- Board of Trustees (name)

- Committee chair

- Colleague

- Local bar association
- State Bar publication or State Bar website
- Other (specify)

(2) Which one of the following best describes the applicant's occupation?

- Private practice
- Publicly employed lawyer
- Corporate law department
- Law teaching
- Quasi-judicial officer
- Non-governmental legal services organization
- Non-profit organization
- Retired justice or judge
- Retired lawyer
- Other (specify)

(3) What is the size of the applicant's law office?

- Sole practitioner
- 2-10 lawyer office
- 11-35 lawyer office
- 36-100 lawyer office
- 101+ lawyer office
- Not applicable

(h) Questions

(1) Statement of Interest: Please state why you wish to serve on the committee and what you can contribute that makes you a candidate for appointment.

(2) Experience: Describe any previous work or experience you may have had with the committee.

(3) Additional Background: Describe any additional background you would like to share relevant to your appointment to the committee, including but not limited

to how you can contribute to the diversity and broad composition of the State Bar's committees and commissions.

#### OPTIONAL SECTION

(i) A portion of the application form shall be voluntary, and may solicit information concerning gender, sexual orientation, ethnicity, age, veteran's status, ~~and~~ disability [pursuant to the Americans with Disability Act] contributing to diversity and broad representation; and other characteristics the applicant believes will contribute to diversity of representation on the particular entity.

7. Tab 5.3, Article 1, Section 7 governs the confidentiality of applications and its paragraph (b) can be updated, perhaps as follows:

(b) The executive director or designee shall compile, consistent with law, statistical data concerning the participation in activities of ~~committees, sections, commissions, or other~~ bodies to which the board has appointment authority ~~to make appointments~~, and shall report thereon ~~annually~~, in July of each year, (or at a time calculated to give the best information ~~prior to making~~ before the Board makes annual appointments) to the ~~Stakeholders, Access to Justice, and Appointments~~ Programs Committee. Any and all data, worksheets, and other information used to compile the statistical data shall be confidential and shall be available only to ~~members of the board~~ Trustees and ~~designated~~ staff involved ~~in the appointment process~~ appointments to protect the privacy of applicants.

#### FISCAL/PERSONNEL IMPACT

None

#### RULE AMENDMENTS

None at this time.

#### BOARD BOOK IMPACT

None at this time.

#### BOARD COMMITTEE RESOLUTION

If the Stakeholders, Access to Justice, and Appointments Committee agrees with the recommendations contained in this Agenda Item, the Chair recommends the following resolution:

**RESOLVED**, that the Office of General Counsel is directed to work with staff, as needed, and draft proposed amendments to the Board Book provisions addressed in this Agenda Item for Board consideration at a later meeting.