

# **OPEN SESSION AGENDA ITEM**

## **112 NOVEMBER 2017**

**DATE:** October 27, 2017

**TO:** Members, Board Executive Committee  
Members, Board of Trustees

**FROM:** Sarah L. Cohen  
Attorney

**SUBJECT:** 2017 Governance in the Public Interest Task Force Recommendations

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### **EXECUTIVE SUMMARY**

On May 15, 2017, the 2017 Governance in the Public Interest Task Force (Task Force) filed its third triennial report. The 2017 Task Force Report contains recommendations for changes in the operational and governance structure of the State Bar. Two of the 2017 Task Force recommendations fall within the purview of the Board Executive Committee's charter: (1) Adoption of a Trustee Skills Matrix; and (2) Study of the Board Vacancy Issue. This agenda item requires no action by the Board of Trustees, and is intended as a report from the Board Executive Committee for informational purposes only.

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### **BACKGROUND**

The 2017 Task Force arrived at a comprehensive set of recommendations for improving the structure and functioning of the Board of Trustees. Subsequent to this effort, the 2018 fee bill was introduced in the legislature. The bill, as introduced, was consistent with a majority of the 2017 Task Force recommendations, including elimination of trustee elections, reduction in the size of the Board, four-year trustee terms of office, and changes in the titles of the principal officers from President and Vice President to Chair and Vice Chair. After a robust discussion of ways to improve leadership development, selection and stability, the 2017 Task Force ultimately agreed that the structure reflected in the 2018 fee bill, by which the Chief Justice serves as the appointing authority for the Board Chair and Vice Chair, was a preferable approach. In the final version of the 2018 fee bill, another of the 2017 Task Force recommendations, elimination of the Treasurer position, was incorporated.

With the above reforms now in place with the enactment of SB 36 (Stats. 2017, ch. 422), staff is presenting to the Board Executive Committee the final two, non-legislative, 2017 Task Force recommendations relating to the structure and functioning of the Board of Trustees: (1) adoption of a Trustee Skills Matrix; and (2) study of the Board vacancy issue. These subjects

fall within the Board Executive Committee charter, and do not require submission to the full Board.<sup>1</sup>

## DISCUSSION

### Trustee Skills Matrix

The 2017 Task Force recommended adoption of a Trustee Skills Matrix to highlight the Board of Trustees' existing expertise, as well as any talent deficits, to assist both the Board itself and appointing authorities in trustee and officer selection and development.

As the 2017 Task Force Report observes, the Board of Trustees needs a variety of talent to perform its oversight and policy-making functions successfully. Ideally, the Board's composition would include the right combination of talent in the form of education, expertise and experience. Additionally, demographic and geographic diversity on the Board is critical to ensuring that a variety of perspectives and opinions guide the Board's decision-making process. To ensure both the talent and diversity needed for optimal functioning at the Board level, the 2017 Task Force recommended that the Board offer appointing authorities information on the composition of the Board for their consideration in recruiting and appointing trustees. To this end, a Trustee Skills Matrix has been developed for the Board's use. The Board Executive Committee is charged with the responsibility of maintaining and updating the Trustee Skills Matrix.

Issues related to the Trustee Skills Matrix that remain for discussion and decision-making by the Board Executive Committee include the mechanism for completing the Trustee Skills Matrix and ensuring that it is updated with the arrival of each incoming trustee; and the mechanism for presenting the completed Trustee Skills Matrix to the appointing authorities.

Attachment A contains a completed Trustee Skills Matrix, a Rolling Forecast of Skills for 2017 and a document entitled The Board Building Cycle – Nine Steps to Finding, Recruiting, and Engaging Nonprofit Board Members from the organization Board Source<sup>2</sup>.

### Board Vacancies

The 2017 Task Force recommended that the size of the Board of Trustees be reduced from 19 to 17. A Board size of 17 was thought necessary for accomplishing the oversight and policy-making work of the Board, especially considering the problem of Board vacancies.

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<sup>1</sup> "The Board Executive Committee shall: Board of Trustees Functioning: Oversee the functioning of the Board of Trustees by coordinating the work of the other Board Committees; keep the State Bar Mission Statement updated; set Board Member performance standards; monitor Board member performance; perform the annual Board Assessment; and maintain and update the Trustee Skills Matrix to assist the Board and appointing authorities in Trustee and officer selection and development." (Board Book, Main Section 2, Tab 2.6, Charter for Board Executive Committee.)

<sup>2</sup> Board Source is an organization that supports, trains and educates nonprofit leaders, and provides an "extensive range of tools, resources and research data to increase board effectiveness and strengthen organizational impact." (Board Source at <https://boardsource.org/about-boardsource> [as of October 27, 2017].)

The 2018 fee bill reduced the size of the Board to 13. This reduction in size could pose a challenge if trustee positions remain unfilled over a significant period of time. If left unaddressed, the problem of Board vacancies, in combination with the reduction in Board size, could impair the capacity of the Board to carry out its oversight and policy-making responsibilities effectively.

What follows next is a review of the State Bar Act provisions relating to Board vacancies and the changes brought about by passage of the 2018 fee bill, which becomes effective on January 1, 2018.

- ❖ B&P Code,<sup>3</sup> § 6013.1, subd. (c): Supreme Court Attorney Members
  - *Before*: “The Supreme Court shall fill any vacancy in the term of, and make any reappointment of, any appointed attorney member.”
  - *After*: no change
- ❖ B&P Code, § 6013.3, subd. (b): Senate and Assembly Attorney Members
  - *Before*: vacancy issue not addressed
  - *After*: “Vacancies shall be filled for the remainder of the term.”
- ❖ B&P Code, § 6013.5, subd. (b): Six Public Members
  - *Before*: The term commences at the “conclusion of the annual meeting next succeeding his [or her] appointment ... .”<sup>4</sup>
  - *After*: The above language was deleted and the following language was added: “Vacancies shall be filled for the remainder of the term.”
- ❖ B&P Code, § 6013.5, subd. (e): Six Public Members
  - *Before*: “Each respective appointing authority shall fill any vacancy in and make any reappointment to each respective office.”
  - *After*: no change
- ❖ B&P Code, § 6016: Attorney Members
  - *Before*: The term commences at the “conclusion of the annual meeting next succeeding his or her election or appointment ... .”
  - *After*: The above language was deleted.

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<sup>3</sup> Business and Professions Code

<sup>4</sup> The problem posed by this language is well illustrated by the example of incoming Trustee Joshua Perttula. The Senate Judiciary Committee appointed Mr. Perttula to the Board of Trustees subsequent to the annual meeting in September 2017. Under the statute, his term will not commence until the conclusion of the September 2018 annual meeting. Upon the effective date of the 2018 fee bill, it is anticipated that Mr. Perttula's appointment under the old statute will be rescinded and he will be re-appointed to a term of office effective immediately upon reappointment.

- *Before:* “[H]e or she shall hold office until his or her successor is elected or appointed and qualified.”
- *After:* no change
- *Before:* “Except as specified in Section 6013.1, vacancies in the board of trustees shall be filled by the board by special election or by appointment for the unexpired term.”
- *After:* “Vacancies shall be filled for the remainder of the term.”
- *Before:* “The board of trustees may provide by rule for an interim board to act in the place and stead of the board when because of vacancies during terms of office there is less than a quorum of the board.”
- *After:* no change

❖ B&P Code, § 6021, subd. (b): Chair and Vice Chair Appointment by Supreme Court

- *Before:* vacancy issue not addressed
- *After:* “The chair and vice chair shall not serve more than two terms, except that a chair or vice chair who is appointed to fill a vacancy for the balance of a term is eligible to serve two full terms in addition to the remainder of the term for which he or she was appointed.”

The unchanged language in Business and Professions Code section 6016 --- “[H]e or she shall hold office until his or her successor is elected or appointed and qualified.” --- allows for appointees to remain as “holdover” appointments until a successor is appointed. This section applies only to attorney members of the Board of Trustees. Public members of the Board of Trustees are subject to a similar holdover provision in Government Code section 1302.<sup>5</sup>

The holdover provisions in the Business and Professions Code and the Government Code embody the same policy against creating vacancies in public office with gaps between successive office holders through the mechanism of allowing an incumbent to hold over until a successor is qualified and seated. The result is that the tenure of the office is prolonged by operation of the law. Case authority appears to suggest that not only can incumbents in expired terms hold over, but it is their duty to do so.

With passage of the 2018 fee bill, there are no longer any statutory impediments to addressing the problem of Board vacancies. Each appointing authority has the explicit authority to fill vacant positions. The terms of office are effective immediately. And, holdovers are not only permissible, but supported as a matter of public policy.

Currently there are four vacancies on the Board of Trustees.

❖ Senate Committee on Rules: 1 Attorney Member and 1 Public Member

- Attorney Member – Joshua Perttula has been appointed but his term does not commence until September 2018, as he was appointed under the former language of the statute.

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<sup>5</sup> Government Code section 1302 provides: “Every officer whose term has expired shall continue to discharge the duties of this office until his successor has qualified.” Government Code section 1001 defines civil officers as including persons on boards or commissions created under the laws of the state or established under the Constitution.

- Public Member – not filled
- ❖ Speaker of the Assembly – 1 Attorney Member and 1 Public Member
  - Attorney Member – filled by Trustee Michael G. Colantuono (final year)
  - Public Member – not filled
- ❖ Governor – 4 Public Members
  - 2 positions filled by Trustee Renée LaBran (1<sup>st</sup> year) and Trustee Stacie Spector (2<sup>nd</sup> year)
  - 2 positions not filled

The 2017 Task Force recommended that the Board vacancy issue be studied further. The issue is now even more important in light of the smaller size of the Board of Trustees.

### **FISCAL/PERSONNEL IMPACT**

None

### **RULE AMENDMENTS**

Not applicable

### **BOARD BOOK IMPACT**

None

### **STRATEGIC PLAN GOALS & OBJECTIVES 2017-2022**

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: c. Implement and pursue governance, composition, and operations reforms needed to ensure that the Board’s structure and processes optimally align with the State Bar’s public protection mission.

### **STAFF RECOMMENDATIONS**

The Staff recommends that the Board Executive Committee approve the following resolutions:

**RESOLVED**, that the Board Executive Committee adopt the Trustee Skills Matrix in implementation of the 2017 Governance in the Public Interest Task Force recommendations; and it is

**FURTHER RESOLVED**, that the Board Executive Committee develop approaches to address the Board vacancy problem in implementation of the 2017 Governance in the Public Interest Task Force recommendations.

## **ATTACHMENT(S) LIST**

- A.** Trustee Skills Matrix, a Rolling Forecast of Skills for 2017 and a Board Source document entitled The Board Building Cycle – Nine Steps to Finding, Recruiting, and Engaging Nonprofit Board Members

# ATTACHMENT A

## **Trustee Skills Matrix**

# State Bar of California – Trustee Skills Matrix

The 2017 Governance in the Public Interest Task Force observed:

The Board of Trustees needs a variety of talent to perform its oversight and policy functions successfully. Ideally, the Board’s composition would include the right combination of talent in the form of education, expertise and experience necessary to shepherd the State Bar through recurrent issues it should anticipate in its yearly cycle of activities, as well as others that will arise from time to time. Additionally, demographic and geographic diversity on the Board is also critical to ensuring that a variety of perspectives and viewpoints guide the Board’s decision-making process. In order to ensure both the talent and diversity needed for optimal functioning at the Board level, the Task Force recommends that the Board offer appointing authorities information about the composition of the Board for their consideration in recruiting and appointing trustees. To this end, a trustee skills inventory survey and skills matrix are being created, drawing upon the views of both trustees and stakeholders, which will allow the Board to provide appointing authorities with a rolling forecast of gaps in trustee experience and ability.

Below is the current Trustee Skills Matrix, including information on gender and diversity.

	Governance & Board Leadership	Financial & Audit	Operations & Management	Public Admin	Legal Practice	Access to Justice (e.g., Legal Aid )	Legal Ethics	Talent & Human Resources	Gender	Diversity <sup>1</sup>	Region
Broughton	✓	✓			✓	✓	✓		Male		Central Valley
Chen	✓			✓		✓			Female	Asian	Los Angeles
Colantuono	✓		✓	✓				✓	Male		Northern California
Fox									Male		Bay Area
LaBran	✓	✓	✓					✓	Female		Los Angeles
Lee	✓	✓		✓					Male	Asian	Los Angeles
Mendoza	✓		✓					✓	Female		Sacramento
SeLegue	✓	✓		✓	✓		✓		Male		Bay Area
Spector	✓		✓	✓					Female		San Diego
Stallings	✓				✓				Male		San Diego
Steinbrecher	✓		✓		✓	✓			Male		Los Angeles
Stevens	✓	✓	✓	✓	✓	✓			Male		San Diego

<sup>1</sup> Completion of the diversity category is still in progress.



**Governance & Board Leadership:** Experience on a governing board, creating vision and mission statements, setting and monitoring goals and performance measures, providing committee leadership, monitoring board performance

**Financial & Audit:** Background in accounting, finance, investment, risk management, audit

**Operations & Management:** Background in planning, budgeting, oversight, policy creation

**Public Administration:** Experience with state or local government administration, managing government entities, budgets

**Legal Practice:** Experience managing or operating a law practice

**Access to Justice (e.g., Legal Aid):** Experience as a legal services attorney, a board member of a legal services provider, as a pro bono volunteer with a legal services provider, other pro bono activities providing legal services to underrepresented or low-income individuals

**Legal Ethics:** Expertise in the California Rules of Professional Conduct and State Bar Act; familiarity with the Committee on Professional Responsibility & Conduct, the Commission for Revision of Rules of Professional Conduct

**Talent & Human Resources:** Background in executive-level recruitment, selection, evaluation; experience with executive-level succession planning

## Rolling Forecast of Skill

	2017	2018	2019	2020	2021	2022
Governance & Board Leadership	11					
Financial & Audit	5					
Operations Mgt	6					
Public Admin	6					
Legal Practice	5					
Access to Justice	4					
Legal Ethics	2					
Talent & Human Resources	3					
Diversity	TBD					

## **Board Source: The Board Building Cycle - Nine Steps to Finding, Recruiting, and Engaging Nonprofit Board Members**

1. Design
  - Develop the Board Profile
  - Expand Board Diversity, but Limit Board Size
2. Cultivate
  - Develop a Pool of Potential Board Members
  - Cultivate Relationships
3. Recruit
  - Explore Interest and Mutual Fit
  - Prepare for Nomination and Election
  - Appointed and Member-Elected Boards
  - Formal Nomination and Election
4. Orient
  - Prepare New Members for Active Participation
  - Conduct an Orientation
5. Involve
  - Get Everyone Engaged with the Work of the Board
  - Work to Develop the Board as an Inclusive Team
  - Clarify Responsibilities for Involving Board Members
6. Educate
  - Create Regular Opportunities for Board Education
  - Evaluate
7. Assess the Board's Performance
8. Rotate
  - Keep the Board Fresh
9. Celebrate
  - Appreciate Efforts and Celebrate Achievements