

# **OPEN SESSION**

## **AGENDA ITEM**

**702 FEBRUARY 2018**

**DATE:** February 7, 2018

**TO:** Members, Board of Trustees

**FROM:** Donna Hershkowitz, Chief of Programs  
Dag MacLeod, Chief of Mission Advancement and Accountability

**SUBJECT:** Legislative Priorities

---

### **EXECUTIVE SUMMARY**

This agenda item seeks the Board of Trustees' approval of the initial legislative priorities and agenda for 2018. This item seeks approval only for pursuing technical amendments or clean-up as part of the Bar's annual licensing fee legislation, including eliminating references to "members," and "dues," as vestiges of the trade associational role of the Sections, and eliminating remaining references to the Treasurer of the State Bar, a position eliminated as part of last year's fee legislation. This agenda item also seeks approval to pursue other items of statutory clean-up.

---

### **BACKGROUND**

The Board of Trustees, at its January 2018 meeting, approved guidelines for the operation of the Bar's legislative program and guidelines for the types of legislation the Bar could act on, consistent with its mission. This item seeks approval only for pursuing technical amendments as part of the Bar's annual licensing fee legislation. The amendments are consistent with the criteria adopted by the Board in January.

### **DISCUSSION**

In 2017, the Bar transitioned the former "State Bar Sections" into a standalone entity. This effort was intended, among other things, to draw a clear line between the public protection mission of the State Bar, and the trade associational activities. A symbolic but meaningful way to enforce that change in the minds of attorneys throughout of the State, and clarify for everyone what the mission of the State Bar is, is to eliminate terminology that is more appropriate for a trade association. To that end, the frequent statutory references to "members" of the State Bar and "dues" that are paid for "membership" should be changed. Depending on context, references to "members" should be amended to instead refer to "attorneys," "licensees," or "licensed attorneys." Similarly, references to "dues" and "membership dues" should be amended to "fees" or "licensing fees, as appropriate. These amendments are consistent with Goal I of the Bar's Strategic Plan, focusing on the transition to the "new State Bar" and the Bar's public protection and access to justice mission.

Legislation containing the magnitude of changes to State Bar governance as were included in last year's fee bill is apt to miss a few needed changes. In this vein, although the position of Treasurer of the Board of Trustees was eliminated last year, staff has identified three remaining references to the Treasurer, in Business and Professions Code sections 6020, 6024, and 6145. Staff is proposing to eliminate those now outdated references, and any other references that staff may later identify.

Similarly, last year's fee legislation created what may be seen as an inconsistency in the understanding of the "Board term," i.e., the typical start of a term and the Board year. Business and Professions Code section 6021 provides that the terms of Board Chair and Vice-Chair start at the conclusion of the annual meeting (typically September) and conclude the following year at the end of the annual meeting. Previously, other appointments to the Board were tied to the annual meeting as the start and conclusion of the terms. However, as to all appointments other than the Chair and Vice-Chair, the reference to the start and conclusion of the term was eliminated. It is important that, with a smaller Board, the appointing authorities have the flexibility to make appointments at any time there is a vacancy, but the Board would benefit from continuing the practice of having the start of Board terms tie to the annual meeting, with appointments other times of the year permitted. Among other things, the Board's training calendar assumes that most new members will be appointed in September, and thus front loads certain training, important for new members, in the first couple of months of the year. If terms started year round, educating Trustees on important aspects of their responsibilities would be more difficult, and might have to occur one-on-one.

Finally, staff is proposing to update outdated references in statutes to properly refer to the role and authority of the State Bar Court, instead of the current references to the Board. For example, the following statutes, all enacted before the creation of the State Bar Court, appear to contain outdated references to the role of the Board in imposing discipline or investigating disciplinary complaints,

Business and Professions Code section 6049.2.

In all disciplinary proceedings pursuant to this chapter, the testimony of a witness given in a contested civil action or special proceeding to which the person complained against is a party, or in whose behalf the action or proceeding is prosecuted or defended, may be received in evidence, so far as relevant and material to the issues in the disciplinary proceedings, by means of a duly authenticated transcript of such testimony and without proof of the nonavailability of the witness; provided, the board or administrative committee may order the production of and testimony by such witness, in lieu of or in addition to receiving a transcript of his testimony and may decline to receive in evidence any such transcript of testimony, in whole or in part, when it appears that the testimony was given under circumstances that did not require or allow an opportunity for full cross examination.

Business and Professions Code section 6053.

Whenever in an investigation or proceeding provided for or authorized by this chapter, the mental or physical condition of the member of the State Bar is a material issue, the board or the committee having jurisdiction may order the member to be examined by one or more physicians or psychiatrists designated by it. The reports of such persons shall be made available to the member and the State Bar and may be received in evidence in such investigation or proceeding.

Business and Professions Code section 6077.

The rules of professional conduct adopted by the board, when approved by the Supreme Court, are binding upon all members of the State Bar.

For a willful breach of any of these rules, **the board has power to discipline members** of the State Bar by reproof, public or private, or to recommend to the Supreme Court the suspension from practice for a period not exceeding three years of members of the State Bar.

Business and Professions Code section 6078.

After a hearing for any of the causes set forth in the laws of the State of California warranting disbarment, suspension or other discipline, the board has the power to recommend to the Supreme Court the disbarment or suspension from practice of members or to discipline them by reproof, public or private, without such recommendation.  
The board may pass upon all petitions for reinstatement.

Business and Professions Code section 6080/

The board shall keep a record of all disciplinary proceedings. In all disciplinary proceedings resulting in a recommendation to the Supreme Court for disbarment or suspension, the board shall keep a transcript of the evidence and proceedings therein and shall make findings of fact thereon. The board shall render a decision to be recorded in its minutes. In disciplinary proceedings in which no discipline has been imposed, the records thereof may be destroyed after five years.

Staff recommends that the Board authorize the clean-up of the above and similar statutes to properly reference the role of the State Bar, the State Bar Court, and the Board of Trustees.

#### **FISCAL/PERSONNEL IMPACT**

None

#### **RULE AMENDMENTS**

None

#### **BOARD BOOK IMPACT**

None, although a separate review of the Board Book would be appropriate to identify these same or similar issues.

#### **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: 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.

## RECOMMENDATION

Staff recommends that the Board of Trustees approve the following resolution:

**RESOLVED**, that the Board of Trustees approve pursuing legislative amendments to change statutory references from “members” to “licensees,” “licensed attorneys,” or “attorneys,” as contextually appropriate; and it is

**FURTHER RESOLVED**, that Board of Trustees approve pursuing legislative amendments to change statutory references from “dues” to “fees” or “licensing fees,” as contextually appropriate; and it is

**FURTHER RESOLVED**, that the Board of Trustees approve pursuing legislative amendments as clean-up to last year’s fee legislation, including eliminating remaining statutory references to the Treasurer position, and revising the description in Business and Professions Code section 6031 of the Board’s mission that is inconsistent with the transition of the Sections, specifically by making the following amendment:

“6031(a) The board may aid in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, including, but not by way of limitation, ~~all matters that may advance the professional interests of the members of the State Bar~~ and such matters as concern the relations of the bar with the public;” and it is

**FURTHER RESOLVED**, that the Board of Trustees approve pursuing legislative amendments to define the “Board year” as September to September, syncing up the presumed start of Board terms with the statutory provision defining the start and end of terms of the Chair and Vice-Chair; and it is

**FURTHER RESOLVED**, that the Board of Trustees approve pursuing legislative amendments to update statutes to properly refer to the role and authority of the State Bar Court, instead of the current references to the Board, as described in the Discussion section of this agenda item; and it is

**FURTHER RESOLVED**, that the Board of Trustees delegate to staff the authority to determine the appropriate strategy of the manner in which, and the method, to pursue the above amendments.

## ATTACHMENT(S)

None