

OPEN SESSION AGENDA ITEM

705 MARCH 2018

DATE: March 9, 2018

TO: Members, Board of Trustees

FROM: Dag MacLeod, Chief of Mission Advancement and Accountability

SUBJECT: State Bar Legislative Priorities

EXECUTIVE SUMMARY

This agenda item seeks the approval of the Board of Trustees to finalize the State Bar's legislative priorities to address core components of the Bar's public protection mission and revenue generation in support of that mission. The adoption of these priorities does not commit the Bar to seeking these changes during the current legislative session. Rather, these priorities are intended to establish broad guidelines for staff to follow subject to modification in consultation with the Board, the Supreme Court, and the Legislature.

BACKGROUND

At its meeting on January 27, 2018, the Board of Trustees adopted guiding principles for the Bar to use in determining appropriate legislation to pursue and on which to take formal positions. The resolutions approved by the Board at the January meeting also eliminated out dated provisions of the Board Book related to legislative policies and procedures. The guiding principles adopted by the Board – "State Bar Legislative Program: Purpose and Guiding Principles" (Attachment A) – tie the Bar's legislative program directly to the mission of the Bar, linking it to the Bar's 2017-2022 Strategic Plan.

At its February meeting, the Board approved initial legislative priorities for the 2017-2018 legislative session (Attachment B). These initial priorities related entirely to technical changes designed to ensure that statutory language that references the Bar reflects the transition to the "new State Bar" and is consistent with the Bars focus on public protection and access to justice – for example changing statutory references to "members" to "attorneys," "licensees," or "licensed attorneys."

DISCUSSION

Since the February meeting, staff have worked closely with the Bar's legislative liaison in Sacramento and consulted with members of the Board serving as advisors to staff on legislative

issues to finalize the remaining legislative priorities for the 2017-2018 legislative session. Unlike the recommendations adopted at the February meeting, the legislative priorities in this report focus on statutory issues that relate more directly to the core function of the Bar as a public protection agency, as well as revenue generating measures that support the Bar's public protection functions.

Revenue Generating Measures

1. Amend the Franchise Tax Board (FTB) Revenue and Taxation Code 19280 to expand the court-ordered debt collection program to cover discipline costs and Client Security Fund (CSF) repayments that are the result of State Bar Court or Supreme Court orders or determinations of the CSF Commission or State Bar of California.
2. Allow the State Bar to provide Social Security Numbers (SSN) to collections vendors under contract with the State Bar and the FTB if necessary, to give them access to a broader array of collection tools and improve their ability to collect.

Public Protection

3. Amend Business and Professions Code section 6007(c) as follows:
 - Eliminate Business and Professions Code section 6007(c)(2)(B) to abolish balancing the potential injury to the public from the denial of an involuntary inactive enrollment against the potential injury of an involuntary inactive enrollment to an attorney who is causing or has caused substantial harm to his/her clients or the public;
 - Amend Business and Professions Code section 6007(c)(2)(C) to be Business and Professions Code section 6007(c)(2)(B) and to include a requirement that there must be a reasonable probability that the attorney will be disbarred;
 - Amend Business and Professions Code section 6007(c)(2) to add subparagraph (5) that specifies that involuntary inactive enrollment shall be ordered for an attorney sentenced to incarceration for 90 days or more as a result of a criminal conviction; and
 - Amend Business and Professions Code section 6007(c)(2) to add subparagraph (6) that requires that attorneys who are placed on involuntary inactive enrollment per Business and Professions Code section 6007(c) to comply with rule 9.20.
4. Amend Business and Professions Code section 6102(c) related to summary disbarment to either specify that summary disbarment is available if the facts and circumstances of the offense involve moral turpitude, not only "when convicted of a felony and an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement or involved moral turpitude" (current law); or simply to apply to all felonies.
5. Amend Business and Professions Code section 6140.5(c) and 6140.7 to make clear that it is a condition of "applying for" reinstatement for an attorney who resigns with disciplinary charges pending or is disbarred that the attorney has paid his or her discipline costs and CSF reimbursement.

Other Issues

6. Amend Business and Professions Code Section Code section 6235 to allow Lawyer Assistance Program funds to be used for treatment services for those who cannot afford to pay.
7. Move the final late filing deadline for the California Bar Examination up by two weeks to allow sufficient time to process accommodation requests.

Reporting Requirements

8. Under various sections of California Code, the State Bar is required to report on issues that are prosecuted by the Office of the Chief Trial Counsel. Bar staff will seek, wherever possible, to eliminate reporting requirements that may no longer be necessary or, alternatively, to streamline the reports by bundling the stand-alone reports into the Bar's Annual Discipline Report. These reports are outlined below:
 - Insurance Code Section 1872.95, requires the reporting of complaints investigated alleging possible fraudulent activities by California attorneys relating to workers' compensation, motor vehicle insurance, or disability insurance. The number of complaints received in this area is generally fewer than 10 per year;
 - Business and Professions Code Section 6177 requires the State Bar to report to the Legislature on complaints related to the sale of financial products by lawyers to clients who are elder or dependent adults. Since the reporting requirement commenced in 2001, the State Bar has had a total of 20 complaints;
 - Civil Code 55.32 requires the Bar to report annually on construction-related accessibility demand letters. From January 1, 2013, through July 25, 2017, the State Bar received 1,472 copies of demand letters. Of those, fifty-one involved possible violations of the prohibitions against demands for money and/or specific statements of monetary liability. Twenty-two demand letters resulted in the issuance of Warning Letters. Three of those Warning Letters covered multiple demand letters sent by an attorney. Two demand letters resulted in the issuance of Resource Letters. Twenty-seven demand letters resulted in no further action after investigation;
 - Amend Business and Professions Code Section 6140.1 re: State Bar budget submission to align the reporting with the cycle on which the Bar's fee bill is considered;
 - Amend Business and Professions Code Section 6140.12 regarding reporting on the strategic plan to align it with the submission on the State Bar's budget; and
 - Specify that all report submissions to the Legislature by the State Bar may be done electronically.

FISCAL/PERSONNEL IMPACT

Unknown. Revenue enhancement measures should result in increased funding to support the discipline system; streamlining of the Bar's reporting requirements will reduce operating costs.

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

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.

RECOMMENDATION

It is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approve the legislative priorities referenced in this report and that Bar staff will seek to advance this legislative agenda in close consultation with members of the Board and the Legislature.

ATTACHMENT(S) LIST

- A.** State Bar Legislative Program: Purpose and Guiding Principles
- B.** Legislative Priorities – Open Session Agenda Item 702, February 2018

State Bar Legislative Program: Purpose and Guiding Principles

The State Bar's legislative program is guided by the mission of the State Bar. As set forth in the Strategic Plan for 2017-2022, the State Bar of California's mission is to protect the public and includes the primary functions of licensing, regulation and discipline of attorneys; the advancement of the ethical and competent practice of law; and support of efforts for greater access to, and inclusion in, the legal system.

Guiding Principles:

The purpose of the legislative program is to monitor legislative activity and represent and advocate for the State Bar on legislative, policy and budget matters before the Legislature and Governor. The State Bar seeks to ensure that laws are in place that enhance the ethical and competent practice of law, the ability to effectively license and regulate lawyers, and provide fair, just, and appropriate discipline of attorneys. The State Bar seeks to ensure that laws enhance access to the profession and the justice system. The State Bar seeks to promote laws that identify effective new tools for, or eliminate unnecessary obstacles to, the carrying out of the Bar's public protection mission.

The State Bar's legislative program seeks to advance the following the five goals of the Bar's 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.

Goal 2: Ensure a timely, fair, and appropriately resourced admissions, discipline, and regulatory system for the more than 250,000 lawyers licensed in California.

Goal 3: Improve the fiscal and operational management of the State Bar, emphasizing integrity, transparency, accountability, and excellence.

Goal 4: Support access to justice for all California residents and improvements to the state's justice system.

Goal 5: Proactively inform and educate all stakeholders, but particularly the public, about the State Bar's responsibilities, initiatives, and resources.

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