

OPEN SESSION AGENDA ITEM

701 APRIL 2018

DATE: April 16, 2018
TO: Members, Board of Trustees
FROM: Dag MacLeod, Chief of Mission Advancement & Accountability
SUBJECT: State Bar Legislative Priorities

EXECUTIVE SUMMARY

State Bar staff is seeking to add an additional legislative priority to the list of approved priorities and also seeking approval from the Board of Trustees to take a position on proposed legislation that would transfer \$1 from the mandatory, \$10 Lawyer Assistance Program (LAP) assessment on active, licensed attorneys to fund a voluntary drug-alcohol program for attorneys outside of the structure of the LAP.

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.

In subsequent meetings the Board approved a number of technical changes and substantive proposals submitted by staff. These approved changes and proposals have guided Bar staff in their conversations with Legislative staff during the current legislative session and are summarized in Attachment B.

DISCUSSION

The first of the two items addressed in this agenda item fits squarely within the State Bar Legislative Program: Purpose and Guiding Principles in support of Goal 3 of the Bar’s strategic plan:

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

Record Retention Schedules

Staff is seeking to add a legislative priority to the list of Board-approved priorities to create more rational rules for records retention. Business and Professions Code section 6092.5(d) currently requires that the Bar maintain “permanent records of discipline and other matters within its jurisdiction.” As currently applied to record retention schedules of the State Bar, a broad swath of records is designated as needing to be retained for the “life of Bar.”

The Bar incurs significant costs to maintain these records. Over 36,000 boxes of Office of Chief Trial Counsel (OCTC) records are designated “life of Bar” and cost the Bar over \$70,000 annually for storage. When the new case management system is implemented for the OCTC, the State Bar Court, and the Office of Probation, digitization of these records will impose an additional cost on the Bar if every record designated “life of Bar” needs to be scanned. For OCTC files, alone, the estimated cost of scanning the “life of Bar” files is \$7.8 million.

To establish more rationale rules of for record retention, the Office of the General Counsel has drafted language amending Business and Professions Code Section 6092.5(d) which is provided below. If this proposed amendment is approved by the Board and enacted into law, staff will work with the Supreme Court to develop record retention schedules for the Bar that mirror those used in the courts.

(d) Maintain records of the agency as directed by the California Supreme Court ~~permanent records of discipline and other matters within its jurisdiction~~, and compile statistics to aid in the administration of the system, including, but not limited to, ~~a single log of~~ all complaints received, investigative files, statistical summaries of docket processing and case dispositions, transcripts of all proceedings which have been transcribed, and other records as the disciplinary agency or court require to be maintained.

Transfer of Funds from the Lawyer Assistance Program

Under Business and Professions Code Section 6140.9 the LAP is funded by a \$10 mandatory annual fee on active, licensed attorneys, and a \$5 mandatory annual fee on inactive, licensed attorneys. A proposal, initially sponsored by the Other Bar, seeks to redirect \$1 of that \$10 fee to support an independent third-party drug-alcohol program. The basis for this proposal is a belief that voluntary LAP participants will be better served by a non-Bar related program, and that, given the history of annual surpluses in the LAP Fund, a \$1 redirection is fiscally viable.

Bar staff understands that there is significant legislative support for this proposal, which will likely be incorporated in to the State Bar’s 2019 fee bill. In addition, the proposal is aligned with the charge of the Governance in the Public Interest Task Force, Appendix I review of the LAP, which anticipates that voluntary LAP services may be best provided by non-Bar entities.

For these reasons, staff recommends that the Board support the proposed redirection of \$1 of the \$10 mandatory LAP fee for active, licensed attorneys to an independent drug-alcohol program.

FISCAL/PERSONNEL IMPACT

Modification of records retention rules would result in tens of thousands of dollars in savings annually on the costs of physical storage; scanning costs associated with the current retention schedule could total as much as \$8 million.

Transfer of \$1 of the LAP fee on active, licensed attorneys would result in the loss of approximately \$190,000 annually in LAP revenue. The LAP budget can readily sustain this revenue reduction.

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

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

RECOMMENDATION

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

RESOLVED, that a modification of Business and Professions Code 6092.5(d) is added to the list of Board-approved Legislative Priorities; and it is

FURTHER RESOLVED, that the Board does not oppose legislation that would transfer a dollar from the mandatory fee that supports the Lawyer Assistance Program to fund a voluntary drug-alcohol treatment program outside of the Bar.

ATTACHMENT(S) LIST

- A.** State Bar Legislative Program: Purpose and Guiding Principles
- B.** Summary of Board-Approved Legislative Priorities – 2017-18 Legislative Session

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.

Board Approved Legislative Priorities

#	TECHNICAL CLEAN-UP	Approved
1	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.	February 16, 2018
2	<p>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.</p> <p>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.</p>	February 16, 2018
3	<p>Updating statutes, all enacted before the creation of the State Bar Court, that contain outdated references to the role of the Board in imposing discipline or investigating disciplinary complaints,</p> <p>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.</p> <p>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,</p>	February 16, 2018

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	<p>public or private, without such recommendation. The board may pass upon all petitions for reinstatement</p> <p>Business and Professions Code section 6080</p> <p>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.</p>	
	SUBSTANTIVE LEGISLATION	Approved
4	<p>Revenue Generating Measures</p> <p>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.</p> <p>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.</p>	March 9, 2018
5	<p>Public Protection</p> <p>Amend Business and Professions Code section 6007(c) as follows:</p> <p>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;</p> <p>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;</p> <p>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</p> <p>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</p>	March 9, 2018

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	<p>section 6007(c) to comply with rule 9.20.</p> <p>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.</p> <p>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.</p>	
6	<p>Miscellaneous: Lawyer Assistance Program</p> <p>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.</p> <p>Move the final late filing deadline for the California Bar Examination up by two weeks to allow sufficient time to process accommodation requests.</p>	March 9, 2018
7	<p>Miscellaneous: Reporting Requirements</p> <p>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:</p> <p>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;</p> <p>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;</p> <p>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</p>	March 9, 2018

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	<p>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;</p> <p>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;</p> <p>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</p> <p>Specify that all report submissions to the Legislature by the State Bar may be done electronically.</p>	
8	<p>Miscellaneous: Records Retention</p> <p>Under Business and Professions Code Section 6092.5(d) the Bar is required to retain a significant number of records – currently over 36,000 boxes of files for the Office of the Chief Trial Counsel along – permanently. Retention of these records represents a significant expense for the Bar and will represent an even larger expense if, with the transition of the Bar off of legacy IT systems, all of the records that must currently be retained, have to be scanned and imaged into the new system.</p> <p>Proposal to seek changes to 6092.5(d) that would allow the Supreme Court to define the records retention schedule for the Bar and align it with records retention schedules of other Judicial Branch entities.</p>	<p><i>Proposed, April 16, 2018</i></p>