

OPEN SESSION
AGENDA ITEM

54-116 November 2018
EX COM I. 2

DATE: 11/15/2018

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

FROM: Kimberly DaSilva, Attorney, Mission Advancement and Accountability

SUBJECT: Approval and Ratification of Board Book Revision to Change Composition of Committee on Regulation and Discipline

EXECUTIVE SUMMARY

This agenda item proposes a revision to the Board Book which would eliminate, in the charter of the Regulation and Discipline Committee (RAD,) the requirement that the composition of RAD include all Board members, except the two California Supreme Court's Applicant Evaluation and Nomination Committee (AENC).

BACKGROUND

The State Bar's Board of Trustees Policy Manual (commonly known as the "Board Book") was adopted in September 2004 as a compilation of statutes, Rules of the State Bar, and other policies and procedures adopted by Board resolutions that govern the operations of the Board and its oversight of the agency. Although the Board Book is currently undergoing a substantial revision, until the revision is approved by the Board, the current Board Book governs and any revisions must be made to it.

The RAD committee is a standing Board Committee. (See Board Book, Section 1, Tab 2.5, Article 1, Section 2.) Included in the current Board Book is the RAD committee's Charter, which requires that:

All members of the Board of Trustees are appointed to the Regulation and Discipline Committee, except for any Board members appointed and serving on the Supreme Court's Applicant Evaluation and Nomination Committee.

(See Board Book, Section 1, Tab 2.5, Article 4.)

DISCUSSION

The Board Chair proposes this change to eliminate, in the RAD committee's charter, the requirement that the committee be composed of all Board members, except those appointed and serving on the Supreme Court's Applicant Evaluation and Nomination Committee. The purpose of the proposal is to make the RAD committee smaller, for the following reasons.

In general the proposal is an attempt to align the State Bar's practices with typical board governance practices in which committees are composed of less than the entire board. Typically, committees develop proposals and make recommendations which they then present to a full Board to either adopt or reject.

Specific to the State Bar, the proposal to make RAD a committee of less than the whole Board follows structural changes to reduce the size of the full board from 19 to no less than 13 members by October 2020. The reduction in the Board's size and resources necessarily means that the existing Board members are required to take on more individual responsibility.

Also specific to the State Bar, the proposal aims to align the RAD committee with the spirit of recent reforms based on the Appendix I recommendation to limit the size of sub-entities. While the size of the State Bar's standing committees, like the RAD committee, are not limited by the Appendix I recommendation that sub-entities be comprised of no more than 7 members, without a showing of need, the proposal flows from the argument that smaller committees produce better results.

FISCAL/PERSONNEL IMPACT

No significant fiscal or personnel impact is anticipated.

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

Main Section Section 1, Tab 2.5, Article 4

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: b. 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 Executive Committee and Board of Trustees approve the following resolution:

RESOLVED, that the Board Book be revised in the charter of the Regulation and Discipline Committee (RAD), to eliminate the requirement that the composition of RAD include all Board members, except the two California Supreme Court's Applicant Evaluation and Nomination Committee.

ATTACHMENT(S) LIST

- A. Proposed Amendments to Board Book Tab 2.5 (strikethrough format)

Attachment A

Article 4

CHARTER FOR REGULATION AND DISCIPLINE COMMITTEE

~~All members of the Board of Trustees are appointed to the Regulation and Discipline Committee, except for any Board members appointed and serving on the Supreme Court's Applicant Evaluation and Nomination Committee.~~

~~(Source: California Rules of Court, rule 9.11(a)(2); Board of Trustees Resolution, July 2016; California Rule of Court 9.11; Board of Trustees Resolution, October 2016, August 2017.)~~

The Regulation and Discipline Committee is a performance-monitoring and oversight committee. It is accountable for monitoring the operational performance of the State Bar Program Areas identified on the Board Committee Structure Matrix appended to Tab 2.6. Pursuant to California Rule of Court 9.11(a)(2) any Board member appointed and serving on the Supreme Court's Applicant Evaluation and Nomination Committee may not sit on this committee.

The Regulation and Discipline Committee shall:

- Establish the key elements of a programmatic reporting process, including the content, format, and frequency of performance reports to the Board, and oversee implementation of the process.
- Oversee (as directed by Bus. & Prof. Code, § 6079.5), the work of the Chief Trial Counsel, who reports to and serves under the Regulation and Discipline Committee.
- Approve changes to high-level quality-control policies that apply to the functioning of the State Bar Program Areas under the Regulation and Discipline Committee's performance-monitoring and oversight authority.
- Review performance reports in Regulation and Discipline Committee meetings and report program performance to the full Board.
- Identify and oversee the implementation of needed corrective actions.
- Oversee the preparation of in-depth assessments of program/function effectiveness for presentation at the annual strategic planning session.
- Review internal and external audit reports as they relate to the functions of the State Bar under the Regulation and Discipline Committee's performance- monitoring and oversight authority and oversee implementation of recommendations identified therein.
- Oversee the Annual Discipline Report process and underlying discipline statistics.

- Develop and adopt a Regulation and Discipline Committee Work Plan for approval by the Board Executive Committee; for each Regulation and Discipline

Committee project listed on the Work Plan, the Work Plan shall include a description of the project, the Strategic Plan Goal(s) and Objective(s) that are furthered by the project, and an estimated timeline for completion and presentation to the Regulation and Discipline Committee and/or the Board.

- Perform such other functions relevant to the Regulation and Discipline Committee's subject area as the Board of Trustees may from time to time assign.

(Source: Board of Governors Resolution approving the Regulation, Admissions and Discipline Oversight Committee Charter, May 2002; Board of Governors Resolutions July 2009, September 2010; Board of Trustees Resolution approving Regulation and Discipline Committee Charter, July 2014; Board of Trustees Resolutions November 2015, February 1, 2016, October 2, 2016; Board of Trustees Resolution approving the Regulation and Discipline Committee Charter, August 2017, January 2018.)