

**OPEN SESSION**  
**AGENDA ITEM**

**704 NOVEMBER 2018**

**DATE:** November 16, 2018

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

**FROM:** Leah Wilson, Executive Director  
Donna Hershkowitz, Chief of Programs  
Dag MacLeod, Chief of Mission Advancement and Accountability

**SUBJECT:** Changes to Sub-entity Governance, Structure and Composition:  
Implementation Plans

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**EXECUTIVE SUMMARY**

This agenda item reports back on the status of implementation plans for subentities as directed by the Board of Trustees at its September 13, 2018, meeting. The implementation plans are organized into two major groups: global recommendations that relate to all subentities, and specific recommendations that are unique to individual subentities.

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**BACKGROUND**

In September 2018, the Board of Trustees received a report evaluating the number, size, organizational structure, and functions performed by many of the committees, commissions, boards, and councils that support the work of the State Bar, also known as the “subentities.” Staff produced that report at the direction of the 2017 Governance in the Public Interest Task Force in an effort to streamline the organization of these subentities and align their work more closely with the Bar.

The September report to the Board found that the State Bar uses a much larger number of subentities than other, comparable organizations; that the number of volunteers serving on these subentities is much larger than the number of volunteers who serve on subentities of other, comparable organizations; that the functions performed by some of the subentities may be more appropriately performed by the Board of Trustees or Bar staff; that the qualifications for serving as a subentity volunteer are not always clearly documented, and; that there are uneven policies in place regarding volunteer orientation and training.

To overcome these challenges, the Board approved seven global recommendations related to the size, structure, and organization of all subentities and it approved an

additional nine recommendations specific to individual subentities. Bar staff were directed to return to the Board with implementation plans for these recommendations.

## DISCUSSION

### *Global Recommendations*

Global recommendations approved by the Board are listed in the table, below, taken from the September 2018 report.

**Table 1: Global Subentity Recommendations**

	Proposed Responsible	Change from Current?	Proposed Subentity Role	Proposed Board of Trustees Role
1. Institute formal orientation for all volunteers to the work of the State Bar	State Bar staff	<i>New</i>		Approve the content of Bar orientation
2. Institute and enforce term limits for all volunteers, ensure appointments made timely	Staff Bar staff, appointing authorities, & Board	Yes	Implement	Approve policy
3. Institute conflict of interest policy for volunteers	State Bar staff	<i>New</i>	Implement once approved	Approve policy
4. Formalize desired qualifications for volunteers, by subentity	State Bar staff and Subentity	<i>New</i>	Collaborate with staff to develop	Approve proposed qualifications
5. Establish standard subentity size of 7 or fewer volunteers and process for justification of additional based on workload and need for representation	State Bar staff	<i>New</i>	Collaborate with staff to develop	Approve proposed sizes of subentities
6. Institute sunset review of all subentities every 5 years	Staff Bar staff	<i>New</i>	Participate in review	Review & approve results of reviews
7. Eliminate subentity nominations committees.	State Bar staff	<i>New</i>		Review nominees and approve

#### 1. Institute Formal Orientation for All Volunteers to the Work of the State Bar

Staff evaluated the orientation of volunteers in two broad categories: legal compliance issues related to volunteers and orientation necessary to align the work of volunteers with the mission, organization, and operations of the State Bar. On the basis of this analytic frame, a standardized orientation package will be developed that includes both legal compliance documents and foundational information on the Bar. The standard

information will then be supplemented with subentity specific information, such as the subentity's charter and, where unique, specific duties of the members of the subentity.

The materials that will comprise the standardized orientation package include:

*Compliance*

- Fair Political Practices Commission - Form 700 Statement of Economic Interests
- State Bar Rule 2201 – Assignment of Conflict Counsel
- Bagley-Keene Open Meeting Act
- California Public Records Act Overview
- Ethics and Communications Overview
- Conflicts of Interest & Fiduciary Duties
  - Additional Conflict information as needed for individual subentities

*Orientation & Education*

- Welcome letter from the Executive Director & Chair of the Board of Trustees
- Subentity Charter
- State Bar Strategic Plan
- Organization Chart – Board of Trustees, Board Committees, Subentities
- Organization Chart – State Bar
- Subentity Roster & Contact Information
- Expense Report Instructions and Form

*Staff will report back to the Board in early 2019 with a final, standardized, legal compliance / orientation package to be provided to all subentity members. In addition to this package, all subentity members will receive training on implicit bias/impartial decision-making. At that time, staff will also report back on the plan for ensuring that all volunteers receive this training.*

**2. Institute and Enforce Term Limits for All Volunteers – Ensure Appointments Made Timely**

The terms of volunteers and sizes of the subentities under consideration are currently established through a number of different authorities. Attachment A provides detail related to the rules and statutes governing the subentities under consideration here.

- State Bar Rules specify the terms of member of the California Board of Legal Specialization, and the Client Security Fund Commission;
- Business & Professions Code Section 6046 in conjunction with California Rule of Court 9.4(a) establishes terms for members of the Committee of Bar Examiners;
- Business & Professions Code Section 6231(b) defines the terms of members of the Lawyer Assistance Program Oversight Committee;
- The State Bar's Board of Trustees Policy Manual, more commonly known as the Board Book establishes the terms of the members of the Council on Access and Fairness.

Terms of members of subentities are generally either 3 or 4 years with varying degrees of specificity related to whether members may serve additional terms.

Bar staff will need to collect additional data from all subentity members regarding the number of terms that they have served in order to enforce existing limits. Clearer documentation of terms and term limits will also be provided in the subentity charters contained in the compliance / orientation package provided to volunteers at the beginning of their terms.

Ensuring the timely appointment of subentity members will require a thorough re-working of the current recruitment process. Bar staff have begun evaluating recruitment material posted on the Bar's web site and the recruitment process with an eye toward:

- Providing a single location where succinct descriptions of the work that each of the subentities does can be found;
- Creating a single, standardized application form that allows applicants to indicate their interest in more than one subentity and allows the Bar to track basic information on the qualifications and representativeness of applicant pool;
- Allowing for on-going, continual recruitment throughout the year;
- Conducting out-reach to ensure that the applicant pool is reflective of the rich diversity of the state.

To coordinate the appointment process and rationalize the flow of work required to evaluate and appoint applicants, all terms should be standardized to four years with the possibility of reappointment to serve as an officer of a subentity. These terms should also be staggered across all subentities, not only within subentities, so that appointments are not all concentrated at one or two points in time.

*Staff will report back to the Board on the status of this recommendation in early 2019 with an analysis of the status of the terms of existing subentity members, a proposal for an appointment schedule that will stagger terms to create a steady stream of appointments, and draft language to modify statute, Rule of Court, or Board Book, as needed.*

### 3. Institute Conflict of Interest Policy for Volunteers

*Conflict of interest documentation will be provided to all volunteers as part of the compliance and orientation package provided to them when they are appointed to serve on a subentity. See Number 1, above.*

### 4. Formalize Desired Qualifications for Volunteers by Subentity

In partnership with assigned staff from the Bar, each subentity will be charged with developing a list of desirable qualifications for serving on the subentity along with a brief narrative that describes the work of the subentity, not to exceed, in total, two pages. Each subentity will be responsible for providing a draft of this document to staff in early 2019 for incorporation into recruitment materials to be used by the State Bar.

*Staff will report back to the Board with the final lists of proposed desired qualifications for serving on each subentity in early 2019.*

5. Establish Standard Subentity Size of 7 or Fewer Volunteers and Establish a Process for Justification of Additional Based on Workload and Need for Representation

**Table 2: Recommendations for Subentity Size**

Subentity	Size Established in Statute, Rule, Board Book	Recommended Size and Notes
California Board of Legal Specialization	15	<ul style="list-style-type: none"> <li>• Reduce to 7</li> <li>• Reduction to be achieved through attrition</li> </ul>
Client Security Fund Commission	7	<ul style="list-style-type: none"> <li>• Reduce to 5</li> <li>• Reduction in workload due to restriction of work to appellate function justifies reduction below 7</li> <li>• Reduction to be achieved through attrition</li> </ul>
Committee of Bar Examiners	19	<ul style="list-style-type: none"> <li>• Reduce to 9</li> <li>• Larger size justified by wide range of topics for which CBE is responsible</li> <li>• Combine multiple subcommittees into a single subcommittee that acts on time-sensitive matters (e.g., moral character appeals, exam petitions) between meetings</li> </ul>
Council on Access and Fairness	25	<ul style="list-style-type: none"> <li>• Reduce to 10</li> <li>• Additional members justified to ensure sufficient diversity of representation</li> </ul>
Lawyer Assistance Program Oversight Committee	12	<ul style="list-style-type: none"> <li>• Reduce to 7</li> <li>• Current size is 5 – to reach 7 need to reappoint two members</li> </ul>

In addition to the specific recommendations for subentity size contained in Table 2, above, a process for justifying and approving subentities that have more than 7 members will need to be developed. This process will run concurrent with the finalization of the Board Book revisions. Section 4 of the revised Board Book is currently omitted pending finalization of recommendations related to subentities. The revised Section 4 of the Board Book will also address questions of the size and terms of subentities not covered in the Appendix I review, for example, the Commission on Judicial Nominees Evaluation, and the Committee on Professional Responsibility and Conduct.

*When the recommendations contained in this report are finalized, Section 4 of the Board Book will be modified to reflect these changes. The final version of the Board Book, including the updated Section 4, will be brought through the Board Executive*

*Committee to the full Board at its January, 2019 meeting including a description of a process whereby subentities larger than 7 members (or smaller than 7) may be justified.*

6. Institute Sunset Review of All Subentities Every 5 Years

*The process for sunset reviews of all subentities will also be included in the amended Section 4 of the revised Board Book and brought to the full Board through the Board Executive Committee at its January, 2019 meeting.*

7. Eliminate Subentities Nominations Committees

Subentity nominations committees serve a function that will be replaced by the enforcement of term limits and the restructuring of the subentity recruitment and appointment process (see Number 2, above). Nominations and appointment to leadership positions in subentities will be addressed in the revised Section 4 of the Board Book and brought to the Executive Committee and full Board for review in early 2019.

*Bar staff will communicate with all subentities by the end of 2018 that nominations subcommittees will no longer operate. Board Book guidelines for the operation of subentities contained in Section 4 will reflect this change and be included in the revised version of the Board Book to be approved by the Board Executive Committee and the full Board at its January 2019 meeting.*

Additional Consideration Not Contained in Board Recommendations

A common feature of subentity work that was not considered in the Appendix I subentity review presented to the Board in September was the practice of holding subentity meetings on Saturdays. This practice adds to the cost of staffing subentities as Bar staff incur overtime for Saturday work and facilities must be opened for these weekend meetings. In addition, the Saturday meetings make it difficult for staff to maintain a reasonable work-life balance.

*The Board should establish a policy that weekend meetings, except where absolutely necessary, will not be scheduled.*

## *Subentity Specific Recommendations*

Attachment B sets forth at a high level the actions that will be taken to implement the recommendations adopted by the Board as to each sub-entity. These implementation plans identify the directive adopted by the Board, the actions that will need to be taken to implement the directive, the organizational unit responsible, and a time line for commencement and/or conclusion. To the extent rule revisions are needed to implement a change, the timeline anticipates a global package of rule revisions will be presented to the Board in January 2019 with a request to circulate for public comment; the Board will then be able to adopt related rule changes at its May 2019 meeting. For changes requiring legislation, the implementation plans anticipate all statutory changes will be made during the 2019 legislative session. Details on the needed changes to statutes and rules are provided in Attachment C.

**California Board of Legal Specialization.** This implementation plan anticipates completion of all directives by the end of November, 2019. The plan anticipates that the Bar will be in a position to transition the work of the 11 Advisory Commissions (totaling 99 volunteers) to CBLS, staff, and others in May 2019.

**Client Security Fund Commission.** This plan anticipates implementation of the key directive – to have staff rather than the Commission responsible for issuing of tentative decisions – in December 2018. The final item for implementation would be a rule change which is anticipated to be accomplished in May 2019.

**Committee of Bar Examiners.** This implementation plan anticipates completion of all directives by the end of the 2019 calendar year. The plan contemplates the hiring of one additional staff person to, among other things, allow for the transition of informal moral character conferences from the Committee to staff.

**Committee on Mandatory Fee Arbitration.** This implementation plan anticipates the sunseting of the Committee in June 2019. Completion dates could not be estimated with sufficient certainty at this time for the development of e-learning modules to deliver training to local arbitration programs. It is anticipated this will be completed in 2019. Until such time, members of the Committee have graciously indicated a willingness to continue to volunteer to provide in person trainings.

**Council on Access and Fairness.** This implementation plan anticipates completion of all directives by March 2019. The plan begins with a joint meeting of the Programs Committee and Council leadership at the upcoming Board meeting.

**Lawyer Assistance Program.** At the September 2018 meeting, the Board of Trustees narrowed the options presented by staff from three (3) to two (2), and requested that staff present implementation plans for both of those options. Option 2 would have the State Bar continue to operate the LAP as related to the Alternative Discipline Program and moral character referrals, but no longer operate the remainder, sometimes referred to as self-referrals, support, or voluntary, LAP. Option 3 would transfer all LAP functions out of the Bar.

Staff believe there is value in having the State Bar continue to handle ADP and moral character referrals and that these responsibilities align well with the regulatory mission of the Bar. Staff therefore recommend adoption of Option 2.

Both Options could be accomplished in two different ways: (a) the State Bar would still be statutorily required to provide the services/program, but would contract with an outside entity to deliver those services; or (b) the State Bar would no longer be statutorily required to provide the services and the functions would be contracted out to another entity. The implementation plan does not identify the better of these two methods at this time, but proposes that staff return to the Board by March 2019 with a recommendation, after having had an opportunity to further engage with stakeholders regarding both approaches.

As much of the LAP and the LAP Oversight Committee are creatures of statute, statutory change will be necessary to implement either of these options. Assuming that occurs in 2019, the implementation plans anticipate completion of all directives by January 2020, including the elimination of the Oversight Committee.

**Input of the LAP Oversight Committee.** The LAP Oversight Committee strongly believes that the Board erred in selecting Option 2 or 3. Option 1, which would have had the Bar retain LAP in its entirety, and clarify the charge and responsibility of the Oversight Committee, was the unanimously preferred option of the LAP Oversight Committee. A letter from the LAP Oversight Committee is provided here as Attachment D.

The Oversight Committee believes Board members do not possess the necessary expertise to understand the implications of the decision to contract out all or part of LAP. For example, they question how the Board would oversee the entity providing the service. The Oversight Committee believes that the LAP is making great strides with its recent outreach efforts, and if the Board allowed more time for these efforts to unfold, any concern about underutilization would be minimized or eliminated. The Committee was also concerned that an outside entity would not be willing to continue these outreach efforts and ensure that the attorney and law student population is aware of the availability of these services.

As between Options 2 and 3, the Oversight Committee unanimously concluded that Option 2 is preferred.

## **FISCAL/PERSONNEL IMPACT**

The fiscal impact of the Options regarding the Lawyer Assistance Program is set forth below:

- Option 2:
  - Staff estimates that ADP and moral character referrals comprise 62% of the LAP caseload. The remaining 38% are the voluntary LAP / self-referrals / Support LAP clients.
  - The current LAP budget is \$2.1 million, including staff. An assumption is made that if the Bar retains 62% of the cases, it should retain 62% of the budget. The result is that the Bar would retain \$1.3 million of the annual



- budgeted amount, and approximately \$800,000 would be made available to the entity with whom the Bar contracts.
  - LAP currently has 8 staff. If 62% of the staff were retained to support the caseload retained, 5 staff would remain with LAP. The Bar would seek to find a different placement for 3 staff.
  - If the Bar contracts out the delivery of services (but the function remains the Bar's responsibility), it is assumed that the \$3.4 million in reserves that the program is expected to end this year with would remain with the Bar. If however, the Bar contracts out the whole function of this part of the program, some part of the \$3.4 million in reserves would be transferred to the new entity to assist with start up costs.
  - Because of the anticipated reduction in LAP staff under this Option, an additional \$157,000 would need to be absorbed by the General Fund to address overhead costs currently charged to LAP.
- Option 3:
  - The entire caseload would transfer to another entity, so all of the existing \$2.1 million budget would be made available to the entity with whom the Bar contracts.
  - The Bar would seek to find a different placement for all 8 LAP staff.
  - If the Bar contracts out the delivery of services (but the function remains the Bar's responsibility) the \$3.4 million in reserves would remain with the Bar. If the Bar contracts out all LAP functions, the reserves would be transferred to the new entity.
  - Because of the reduction of 8 LAP staff under this Option, an additional 415,000 would need to be absorbed by the General Fund to address overhead costs currently charged to LAP.

## **RULE AMENDMENTS**

See Attachment C

## **BOARD BOOK AMENDMENTS**

See Attachment C

## **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.

## **RECOMMENDATION**

RESOLVED: The Board of Trustees directs Bar staff to move forward with the implementation of Option 2 on the Lawyer Assistance Program (LAP), specifically directing Bar staff to restructure the LAP so that the Bar retains the Alternative Discipline Program and moral character referrals but no longer operate the self-referral / support component of the LAP.

## **ATTACHMENT(S) LIST**

- A. Statutes and Rules Governing Terms and Size of Subentities
- B. Subentity Implementation Plans
- C. Statutes and Rules Implicated in Implementation of Subentity Recommendations
- D. Letter from the Lawyer Assistance Program Oversight Committee

## ATTACHMENT A – STATUTES AND RULES GOVERNING TERMS AND SIZE OF SUBENTITIES

Entity	Applicable Rules	Rules re term limits <sup>1</sup>	Rules re number of members <sup>2</sup>
California Board of Legal Specialization	State Bar Rules	State Bar Rule 3.93 (A) provides that each board and commission member is appointed for a term of four (4) years. A member whose four-year term is expiring may serve an additional year as chair, vice-chair or immediate past chair. An immediate past chair may also serve an additional year.	State Bar Rule 3.90 (B) provides that the board consists of twelve (12) attorney members, up to two of whom need not be certified specialists, and three (3) non-attorneys.
Client Security Fund Commission	State Bar Rules	State Bar Rule 3.421(A) provides that members serve at the pleasure of the BOT or until expiration of a term set by the BOT. There is no specific rule that sets the terms of CSF. The general rule re three year terms, except to permit service as Chair, Vice-Chair or Chair-Elect in a fourth year, or Chair in a fifth year, therefore applies.	State Bar Rule 3.421 (A) provides that the BOT appoints seven (7) members. Four (4) at most may be present or former members of the Bar or admitted to practice before any court in the United States.
Committee of Bar Examiners	Business and Professions Code; California Rules of Court	Business and Professions Code 6046.5 and Cal Rules of Court 9.4(a), provide that the term of members is four (4) years. The Court may reappoint an attorney or judicial officer examiner to serve no more than three additional full terms.	Business and Professions Code Section 6046 provides that the CBE shall consist of nineteen (19) members, 10 of whom shall be members of the State Bar or judges of courts of record in this state and nine of whom shall be public members who have never been members of the State Bar or admitted to practice before any court in the United States. Per Ruler 9.4 (a) at least one of the ten examiners appointed by the California Supreme Court must be a judicial officer in this state, and the balance must be members of the State Bar.

<sup>1</sup> The Board Book, Section 5, Tab 5.1, Article 1, Section 5 (Term of Membership) provides: “The term of office for all members of standing, special and section executive committees shall be three years; said terms to be staggered. Members serve no more than three years, except to permit service as Chair, Vice-Chair or Chair-Elect in a fourth year, or Chair in a fifth year.” (Emphasis added.) Numerous exceptions are listed. See also Board Book, Section 5, Tab 5.1, Article 4, Section 2 (Term, Maximum). Numerous exceptions are listed here as well.

<sup>2</sup> The Board Book, Section 5, Tab 5.1, Article 1, Section 7 (Size of Committee) provides: The membership of each committee shall be limited to the number that will enable it to perform its work promptly and thoroughly. The board, in determining the size of a committee, shall take into consideration (a) the scope, nature, and quantity of work which it must perform; (b) the time within which the work must be performed; and (c) the expense incident to the performance of the work.” In other words, there is no specific size required by this section, and it is up to the BOT to decide the size of the committee if not dictated by some other rule.

<b>Entity</b>	<b>Applicable Rules</b>	<b>Rules re term limits<sup>1</sup></b>	<b>Rules re number of members<sup>2</sup></b>
Council on Access and Fairness	Board Book	Three (3) years based on general rule in Board Book.	Board Book, Section 5, Tab 5.1, Article 4, Section 10 provides that the Council is composed of twenty-five (25) attorney and public members appointed by the BOT.
Lawyer Assistance Program Oversight Committee	Business and Professions Code, State Bar Rules, Title 3	Business and Professions Code section 6231(b) provides that committee members shall serve a term of four (4) years, and may be reappointed as many times as are desired.	Business and Professions Code section 6231(a) provides that LAPOC shall consist of 12 members. State Bar Rule 3.241 also provides for twelve members, six of whom are appointed by the BOT as required by B&P Code Section 6231.

Directives	Actions	Responsible	Implementation Dates	
			Start	Complete
Continue certifying in a defined set of specialty areas and recognize private organizations to certify in additional areas	Identify whether certification is appropriate in key practice areas that promote access and are otherwise most essential for consumer protection. If so recommend new areas of certification.	CBLS	Jan-19	Ongoing
Evaluate rigor & validity of exams	Contract with a psychometrician to evaluate the examination content and grading and propose changes as needed (see reference to grading in CBE implementation plan)	Admissions	May-19	Sep-19
	Revise existing grading process		Jul-19	Nov-19

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**Reduce the role, size, and meetings  
of the Advisory Commissions**

Transition work of Advisory Commissions to CBLS, staff, consultants, and subject matter experts (as detailed below)	Admissions	Nov-18	May-19
Modify State Bar Rules to delete references to the Advisory Commissions; update references to reflect transition to staff, CBLS or subject matter working groups	OGC		May-19
Advisory Commission members to complete first draft of questions for 2019 exam	Advisory Comm'n		Oct-18
Hire consultants to conduct pre-testing of 2019 exam questions	Admissions	Dec-18	Jan-19
Identify subject matter experts (e.g. LEDG team or EDG team members) to revise questions after pre-testing and assemble 2019 exams	Admissions	Jan-19	Ongoing
Hire consultants for exam development and grading	Admissions		As needed
Pre-test of portion questions from exam bank		Dec-18	Jan-19
Transition to online/remote grading through use of AIMS	Admissions		Nov-19
Transition evaluation of applications for certification to staff, including developing process for subject matter working group review for applications seeking to meet task and experience requirements through alternative means, with new process implemented upon rule change.		Dec-18	Jun-19
Form subject matter specific working groups as necessary to update task and experience standards for certification (starting with worker's compensation and family law)		Jun-19	Engaging, then periodic cycling back to each specialty

# Attachment B

Directive	Actions	Responsible	Implementation Dates	
			Start	Complete
Authority granted to CSF counsel to issue Tentative Decisions on CSF applications.	Revise CSF rules, policies and procedures to reflect change in division of labor. Circulate for public comment and then adoption by the BOT	CSF / OGC	Nov-18	May-19
	Secure delegation of authority of CSF Commission to delegate authority to CSF staff to issue Tentative Decisions in lieu of the Commission pending rule change			Dec-18
	CSF staff to begin issuing tentative decisions directly; Commission to begin as appellate body			Dec-18

## Attachment B

Directive	Actions	Responsible	Start	Complete
<b>Consideration and Final Decision on objections (appeals) to Tentative Decisions remains with the CSF Commission.</b>	Continuation of existing processes unchanged; including CSF receives and processes any objections to Tentative Decisions, conducts legal analysis, schedules for review at Commission meeting; prepares administrative record; prepare final decisions	CSF Counsel/CSF Staff		Ongoing
	Prepare written Final Decisions of Commission.	CSF Counsel/CSF Staff		Ongoing



Directive	Actions	Responsible	Implementation Dates	
			Start	Deadline
Develop sampling plan	Determine how other bar jurisdictions do sampling plans ☐	Admissions	Nov-18	May-19
	Contract with psychometrician to recommend sampling plan methodology	Admissions / ORIA	May-19	Aug-19
	Revise all material to reflect new policies		Jan-19	Nov-19
Evaluate Grading Process	Compare California grading process to other jurisdictions	Admissions	Nov-19	May-19
	Contract with psychometrician to assist in the evaluation, including numbers of graders needed, numbers of reads required and score bands for which reads are required	Admissions / ORIA	May-19	Sep-19
	Revise existing grading process (apply also to FLSX and LSX)		Jul-19	Nov-19
	Revise all material to reflect new policies	Admissions	Jul-19	Nov-19

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**Staff to Handle Moral Character  
Conferences; CBE Appeals**

Develop internal practices for transition to staff led informal conferences	Admissions	Dec-18	Jan-19
Revise State Bar rules which provide for CBE to conduct informal conferences	OGC	Nov-18	May-19
Begin staff conducting of informal conferences (using existing guidelines / decisional law to guide determinations)	Admissions		Jun-19
Develop specific, clearly articulated standards/guidelines for consistent determinations	Admissions / OGC / CBE / Working Group	Mar-19	Dec-19
* Form ad hoc working group of CBE, Deans, others to assist in development of guidelines	Admissions	Feb-19	Dec-19
Create and maintain decisional law library to ensure appropriate consistency	Admissions	Jan-19	Mar-19
Train staff to conduct informal conferences	Admissions/HR	Feb-19	May-19
Recruit Staff	Admissions/HR	Jan-19	
Revise all material to reflect new policies: handbook, website, internal manuals etc.	Admissions		Dec-19

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**CBE to Evaluate Trends in Licensing & Certification**

Revise CBE charge to include this responsibility	Admissions		Jan-19
Identify and share appropriate training & conference opportunities; listservs; professional journals, etc for CBE members to keep abreast of trends	Admissions		Ongoing
review and discuss trends in licensing and certification and best practices	Admissions		Ongoing

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**Cease CBE involvement in Admissions  
Budget development and management**

Cease incl budget item CBE agendas -Continue to provide exam cost-analysis regularly; supply add'l info necessary when evaluating sufficiency of exam fees.	Admissions	Oct-18	Ongoing
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**Staff to Handle Enforcement of Exam Rules;  
CBE Appeals**

Create protocols to transition decisions on petitions for exams and eligibility to staff	Admissions	Dec-18	Jan-19
Revise rules to eliminate references to CBE and subcommittees to consider and affirm Ch. 6 notices and determine sanctions; and to specify appeals process	Admissions / CBE	Nov-18	May-19
Create decisional law library for chapter 6 violations	Admissions	Jan-19	Mar-19

Revise all material to reflect new policies:  
handbook, etc.

Jul-19

Directive	Actions	Responsible	Implementation Dates	
			Start	Complete
Transition from standing committee to staff-driven program	CMFA to continue through the end of June 2019 for the specific purposes of:			
	* Review/update/amend the Arbitrator Handbook	CMFA		Jun-19
	* Review/update/amend the MFA Program Handbook	CMFA		Jun-19
	* Update MFA program materials, including sample fee agreements, to comply w/ the new Rules of Professional Responsibility	CMFA / COPRAC / MFA		Feb-19
	Review/revise staff roles & responsibilities, procedures in light of MFA program to transition to Office of Professional Competence (OPC)	OPC/MFA	Nov-18	Feb-19
	Staff to assume responsibility for reviewing local program rules for conformity w/ State Bar standards for arbitration programs	MFA/OPC	Nov-18	Ongoing
	Appoint PA and APAs for 2019	BOT	Nov-18	Nov-18
	Update requirements for COPRAC appointments to ensure that two or more COPRAC slots are filled by MFA experts	OPC/MFA	Nov-18	Sep-19
	Enhance reporting to the Board through the Regulation and Discipline Committee by identifying the data and statistics that would serve to ensure effective oversight by the Board as well as the frequency of reporting	MFA in collaboration with ORIA	Jan-19	Ongoing

Evaluate staffing needs

Chief of Programs

Ongoing

Ongoing

<b>Implement distance learning</b>				
SOW/secure vendor	OPC	2019	TBD	
Identify small working group of CMFA to assist in the development of e-learning curriculum	MFA staff / CMFA working group	Jan-19	TBD	
Develop 2 E-learning courses to replace current in-person trainings (Basic & Advanced Arbitrator Trainings)	CMFA working group / OPC / MFA	2019	TBD	
Develop 1 E-learning course on Administrator training to replace on demand staff training for each new local program administrator	CMFA working group / OPC / MFA	2019	TBD	
Continue to deliver in-person (Basic/Advanced) Arbitrator trainings, until online modules are available for use	CMFA and/or Volunteers	Nov-18	TBD	
<b>Support for local programs</b>				
Develop and disseminate communication materials to local programs State Bar continued support for MFA program and local programs	MFA / Communications	Dec-18	Feb-19	
Conduct 2 webinars to solicit input from local programs on how the State Bar can support their programs; and to share information on the new construct of the MFA program	MFA / OPC / PA	Jan-19	Mar-19	

Directive	Actions	Responsible	Implementation Dates	
			Start	Complete
<b>Clarify Board strategy on diversity to focus work of COAF</b>	Joint Meeting with Programs Committee to develop direction on COAF focus areas and begin planning for BOT Strategic Planning session in Jan 2019	OA&I		Nov-18
	Based on input from Joint Meeting with Programs Committee, revise COAF charge	COAF / OA&I	Nov-18	Dec-18
	Develop panel presentation on key diversity and inclusion focus areas and strategies for BOT Planning Session for the purpose of developing strategic direction and new strategic plan objectives	OA&I / MAA / COAF	Dec-18	Jan-19
<b>Assess the impact of State Bar work on diversity and inclusion</b>				
	Develop measures of program effectiveness; institute regular data collection; memorialize plan to meet the access, fairness, and diversity goals in B&P 6001.3 and issue report to Legislature	COAF / OA&I		Mar-19



**Lawyer Assistance Program**  
**Option 2: Retain Disciplinary and Moral Character Referrals Only**

Directive	Actions	Responsible	Implementation Dates	
			Start	Complete
Retain the portion of the program serving those referred as part of the Alternative Discipline Program or moral character determinations.	Seek statutory change to implement the BOT's determination for direction of the program.	MAA		Sep-19
	Determine number and classification of positions to continue with LAP seek to find appropriate State Bar placement for staff in eliminated positions.	Executive Leadership		Dec-19
	Upon implementation of statutory changes eliminate the LAP Oversight Committee	BOT		Dec-19
	Determine if LAP should remain separate unit or merge with Probation	Chief of Programs		Dec-19

**Lawyer Assistance Program**  
**Option 2: Retain Disciplinary and Moral Character Referrals Only**

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**Transfer the function of managing the self-referrals (non-ADP, non-moral character) to a separate entity outside the State Bar.**

Preliminary efforts to identify existing outside entities that could be appropriate to handle self-referrals related to substance use and mental health and can provide clinical services

LAP

Jan-19

\*Option (a): State Bar continues to be statutorily required to provide these services, but State Bar contracts out for delivery of the services. Ongoing State Bar involvement to include day-to-day contract management, responsibility for the services, operations, etc.

\*Option (b): State Bar no longer statutorily required to provide the services; the functions as a whole are contracted out to another entity. Ongoing State Bar involvement limited to transfer of licensing fee revenue, review of required reporting, periodic re-bidding to ensure licensing fee revenue being used appropriately

Engage with stakeholders to develop a recommendation as to Option A v. Option B. Bring recommendation to BOT for final decision.

LAP

Mar-19

Upon adoption of legislative changes, issue RFP to formally solicit contracting entity or separate non-profit based on decision adopted by RAD

LAP / OGC /  
Procurement

Oct-19

Award contract and implement

LAP / OGC /  
BOT

Jan-20

# Attachment B

## Lawyer Assistance Program Option 3: Separate the Entire LAP from the State Bar

Directive	Actions	Responsible	Implementation Dates	
			Start	Complete
Separate all LAP functions from the State Bar, retaining no portion of the program	Seek statutory change to implement the BOT's determination for direction of the program.	MAA		Sep-19
	Identify appropriate State Bar placement for all LAP staff	Executive Leadership		Dec-19
	Upon implementation of statutory changes eliminate the LAP Oversight Committee	BOT		Dec-19
	Preliminary efforts to identify existing outside entities that could be appropriate to handle the work currently performed by LAP related to substance use and mental health and can provide clinical services *Option (a): State Bar continues to be statutorily required to have a program, but State Bar contracts out for the program. Ongoing State Bar involvement to include day-to-day contract management, responsibility for the services, operations, etc. *Option (b): State Bar no longer statutorily required to have a Lawyer Assistance Program; the functions as a whole are contracted out to another entity. Ongoing State Bar involvement limited to transfer of licensing fee revenue, review of required reporting, periodic re-bidding to ensure licensing fee revenue being used	LAP		Jan-19
	Engage with stakeholders to develop a recommendation as to Option A v. Option B. Bring recommendation to BOT for final decision	LAP		Mar-19
	Upon adoption of legislative changes, issue RFP to formally solicit contracting entity or separate non-profit based on decision adopted by BOT	LAP / OGC / Procurement		Oct-19
	Award contract and implement	LAP / OGC		Jan-20

# Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

## COMMITTEE OF BAR EXAMINERS

Established pursuant to B&P Code sections 6046 and 6046.5.

Directives	Statute or Rules Implicated
Develop sampling plan	None
Evaluate grading process	None
Staff to handle moral character conference; CBE appeals	<p>The following State Bar Rules will need to be deleted or revised:</p> <p>State Bar Rule 4.40 (Moral Character Determination) sets forth that an applicant must be of good moral character as determined by the Committee. The determination may be made by the Committee or staff.</p> <p>State Bar Rule 4.43 (A) (2) (Abandonment of Application for Determination of Moral Character) provides that an application for moral character is deemed abandoned if the applicant fails to provide additional information requested by the Committee within ninety days of the request.</p> <p>State Bar Rule 4.44 (A) (Withdrawal of Application for Determination of Moral Character) sets forth that the applicant may withdraw an application any time before being notified that the Committee is unable to make a determination without further inquiry and analysis. It also states that following such a notice, withdrawal requires the Committee's consent.</p> <p>State Bar Rule 4.45 (Notice regarding status of Application for Determination of Moral Character) provides that within 180 days of receiving a completed application, the Committee will notify an applicant regarding whether the determination is positive or requires further consideration. It further sets forth the Committee's procedures after receiving the additional information.</p> <p>State Bar Rule 4.46 (Informal conference) sets</p>

## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

	<p>forth the informal conference procedures that are conducted by the Committee.</p> <p>State Bar Rule 4.47 (Appeal of adverse determination of moral character) provides that an applicant notified of an adverse moral character determination must appeal to the State Bar Court. The appeals will first go the Committee under the new procedure.</p> <p>State Bar Rule 4.48 (Agreement of Abeyance) provides that the Committee and an applicant may suspend processing of an application for determination of moral character by an agreement of abeyance.</p> <p>State Bar Rule 4.49 (New application following adverse determination of moral character) sets forth that the Committee may permit an application who has received an adverse moral character determination to file another application two years from the date of the previous determination.</p> <p>State Bar Rule 4.50 (Suspension of positive determination of moral character) provides that the Committee may notify an applicant that it has suspended a positive determination if it receives information that reasonably calls the applicant's character into question.</p>
CBE to evaluate trends in licensing & certification	None
Cease CBE involvement in Admissions budget development and management	None
Staff to handle enforcement of exam rules; CBE appeals	<p>The following State Bar Rules will need to be deleted or revised:</p> <p>State Bar Rule 4.70 (Conduct required at examinations) states that conduct that violates the security or administration of an examination may be reported to the Committee.</p> <p>State Bar Rule 4.71 (Reports of conduct violations) sets forth that a subcommittee</p>

## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

	<p>designated by the Committee considers the Chapter 6 Notices (cheating citations) that have been issued to applicants during or following an examination. It also states that the Committee may establish guidelines and sanctions for the processing of conduct violations.</p> <p>State Bar Rule 4.72 (Request for an administrative hearing on conduct violation) sets forth the procedure for requesting an administrative hearing regarding the subcommittee's finding and appointment of three Committee members to preside over the hearing.</p> <p>State Bar Rule 4.73 (Procedure for an administration hearing on conduct violation) provides that the Committee may establish procedures for conducting administrative hearing on conduct violations and sets forth various procedures.</p> <p>State Bar Rule 4.74 (Review of Findings and Recommendations) provides that the Committee may review and/or adopt the Findings and Recommendations on conduct violations.</p>
Staff handles testing accommodation requests; CBE appeals	<p>The following State Bar Rules will need to be deleted or revised:</p> <p>State Bar Rule 4.80 (Eligibility) provides that applicants with disabilities must establish to the satisfaction of the Committee the existence of a disability. This rule should be clarified to conform to current practice which is that staff handles the testing accommodation requests.</p> <p>State Bar Rule 4.81 (Testing accommodations in general) refers to the Committee processing the petitions for testing accommodations. This rule should be clarified to conform to current practice which is that staff handles the testing accommodation requests.</p> <p>State Bar Rule 4.82 (D) (Definitions) provides that a reasonable testing accommodation may not impose an undue burden on the Committee.</p>

## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

	<p>State Bar Rule 4.84 (D) (When to file a petition for testing accommodation) provides that the Committee may determine that the changing nature of a disability requires that the applicant file a new petition nearer the examination date. This rule should be clarified to conform to current practice which is that staff handles the testing accommodation requests.</p> <p>State Bar Rule 4.88 (Committee response to Petition for Testing Accommodation) sets forth how the petition will be handled. Because this is handled by staff, the title of this section should be revised.</p>
Other rules which may need to be amended to conform with these directives by referring to the State Bar in addition to/or instead of the Committee.	<p>The following State Bar Rules will need to be deleted or revised:</p> <p>State Bar Rule 4.3 (L) and (M) (Definitions) refer to receipt of a document sent by the Committee and receipt of a document sent to the Committee.</p> <p>State Bar Rule 4.5 (A) and (D) (Submissions) refers to documents filed with the Committee and information needed by the Committee.</p> <p>State Bar Rule 4.6 (Investigation and hearing) allows the Committee to receive evidence in conducting an investigation or hearing; administer oaths and affirmations; and compel by subpoena the attendance of witnesses and production of documents.</p> <p>State Bar Rule 4.7 (Statistics) provides that the Committee may publish statistics for each examination.</p> <p>State Bar Rule 4.8 (Extensions of time) provides that the time limits for Committee actions are not jurisdictional and may be extended for good cause.</p> <p>State Bar Rule 4.56 (First-Year Law Students' Examination) includes a phrase that the test centers in California are designated by the</p>

## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

	<p>Committee.</p> <p>State Bar Rule 4.60 (California Bar Exam) includes a phrase that the test centers in California are designated by the Committee.</p>
Law School Accreditation and Law School Engagement	<p>The rules and statutes relating to law school accreditation and law school engagement that require amendment will be presented to the Board of Trustees in January with the recommendations related to those topics that were previously deferred.</p>

### **CALIFORNIA BOARD OF LEGAL SPECIALIZATION**

Established pursuant to Rules of Court, rule 9.35 and State Bar Rules 3.90, et seq.

<b><u>Directive</u></b>	<b><u>Statute or Rules Implicated</u></b>
Continue certifying in a defined set of specialty areas and recognize private organizations to certify in additional areas	<p>New standards will need to be approved. Pursuant to State Bar Rule 3.90, the standards are recommended by the CBLS and approved by the Board of Trustees.</p>
Evaluate rigor & validity of exams	None
Reduce the role, size, and meetings of the Advisory Commissions	<p>The following State Bar Rules will need to be deleted or revised:</p> <p>State Bar Rule 3.92 (Advisory commissions) sets forth that the Board of Trustees appoints an advisory commission of no more than 8 members to recommend and apply certification standards for each area of legal specialization.</p> <p>State Bar Rule 3.39 (Terms) refers to commission members' terms.</p> <p>State Bar Rule 3.94 (Meetings) refers to the meetings of the advisory commissions.</p> <p>State Bar Rule 3.85 (Conflicts of Interest) includes conflict of interest rules for commission members.</p> <p>State Bar Rule 3.117 (References) provides that a commission may seek additional references.</p>



## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

	<p>State Bar Rules 3.121 (Commission action on application), 3.122 (Informal Conference), and 3.123 (Board action on application) set forth rules regarding the certification process and the role of the Commission.</p> <p>The standards will need to be modified where they refer to the Commission.</p>
Change Board size, composition and role	<p>The following State Bar Rules will need to be deleted or revised:</p> <p>State Bar Rule 3.90 (California Board of Legal Specialization) sets forth that Board consists of 12 attorney members and 3 non-attorneys.</p> <p>State Bar Rule 3.114 (Education) referenced “Board-approved education” and Board’s granting of specialty education credit.</p> <p>State Bar Rule 3.115 (Practice and task requirements) refers to the Board’s acceptance or rejection of an applicant’s computation of tasks.</p> <p>State Bar Rule 3.116 (Examination) states the Board determines the scope, format, topics, grading process, and passing score of the examination. It also provides that the Board may approve for a period of no more than two years satisfactory completion of one or more alternative tasks in lieu of a written examination.</p> <p>State Bar Rule 3.118 (Waivers and modifications) provides that the Board may waive or permit modification of a certification requirement.</p> <p>State Bar Rule 3.123 (Board action on application) sets forth the Board’s responsibilities regarding granting or denying a certification.</p> <p>State Bar Rule 3.124 (Suspension or revocation of certification) provides when the Board may suspend or revoke a certification and the procedure.</p>

## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

### **COMMITTEE ON MANDATORY FEE ARBITRATION**

Established pursuant to BOT Resolutions in September 1982, as a special committee, and in November 1984, as a standing committee, with the charge of the committee further defined by the BOT in July 1992.

<b><u>Directive</u></b>	<b><u>Statute or Rules Implicated</u></b>
Transition from standing committee to staff-driven program.	State Bar Rule 3.537 (C) mentions a committee, i.e., it disqualifies members of the Committee on Mandatory Fee Arbitration from representing a party in a State Bar fee arbitration.
Update requirements for COPRAC appointments to ensure that two or more COPRAC slots are filled by MFA experts.	The charge and composition of COPRAC is currently set forth in the Board Book, Section 5, Tab 5.1, Article 2. Membership of the committee is addressed in Section 2 (a).
Implement Distance Learning	None
Support for Local Programs	None

### **COUNCIL ON ACCESS AND FAIRNESS**

Established pursuant to Board of Governor's Resolution March 1982, July 1992, January 2002, November 2006.

<b><u>Directive</u></b>	<b><u>Statute or Rules Implicated</u></b>
Clarify Board strategy on diversity to focus work of COAF.  Assess the impact of State Bar work on diversity and inclusion.	COAF is not mentioned in any statute or State Bar Rule.

### **CLIENT SECURITY FUND**

Established pursuant to Business and Professions Code Section 6140.5,<sup>1</sup> State Bar Rules, Title 3, Division 4, Chapter 12, Rule 3.420, *et seq.*

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<sup>1</sup> B&P Code Section 6140.5 notes, *inter alia*, that the BOT may delegate the administration of the fund to the State Bar Court, or to any board or committee created by the board of trustees.

## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

<b><u>Directive</u></b>	<b><u>Statute or Rules Implicated</u></b>
<p>Authority granted to CSF counsel to issue Tentative Decisions on CSF applications.</p>	<p><u>State Bar Rules:</u></p> <ol style="list-style-type: none"> <li>1. Rule 3.421 (Client Security Fund Commission) Amend wording which states that the Commission has sole authority to determine whether to grant an application;</li> <li>2. Rule 3.430(D) (General requirements for reimbursement) Amend wording which states that the Commission has sole discretion to deny or limit reimbursement;</li> <li>3. Rule 3.432(B) (Required status of attorney) Amend to allow Fund Counsel to waive criteria, in addition to the Commission, for reimbursement pursuant to guidelines for waivers to be established by the Commission;</li> <li>4. Rule 3.435 (Factors that may limit reimbursement) Amend wording which states that the Commission may deny reimbursement for various reasons to state that the Commission and staff may do so;</li> <li>5. Rule 3.436(B) Amend wording which states that the Commission may consider various factors to determine whether a loan or investment meets the requirements of the rule to state that the Commission and staff may do so;</li> <li>6. Rule 3.441(B), (C), (D), (E) (Review of Applications) Amend to allow Fund Counsel to issue tentative decisions, to consolidate applications in the same</li> </ol>

However, it does not address how the work is to be performed, stating only that payments from the fund “shall be subject to the regulations and conditions that board shall prescribe.”

## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

	<p>manner as the Commission may, to separate respondents contained in a single application in the same manner as the Commission may;</p> <p>7. Rule 3.441(F) (Review of Applications) Amend to allow Fund Counsel to waive rule requirements in the interest of justice and for good cause.</p>
Consideration and Final Decision on objections (appeals) to Tentative Decisions remains with the CSF Commission.	None

### **LAWYER ASSISTANCE PROGRAM OVERSIGHT COMMITTEE**

Established pursuant to B&P Code Section 6230, et seq. and State Bar Rules 3.240, et seq.

<b><u>Directive</u></b>	<b><u>Statute or Rules Implicated</u></b>
<p>1. Evaluate separation of voluntary referrals and retention of disciplinary and moral character referrals.</p> <p>Sub-options:</p> <p>a. State Bar continues to be statutorily required to provide these services, but State Bar contracts out for delivery of the services. Ongoing State Bar involvement to include day-to-day contract management, responsibility for the services, operations, etc.</p> <p>b. State Bar no longer statutorily required to provide the services; the functions as a whole are contracted out to another entity. Ongoing State Bar involvement limited to transfer of licensing fee revenue, review of required reporting, periodic re-bidding to ensure licensing fee revenue being used appropriately.</p>	<p>The following B&amp;P Code sections will need to be deleted or amended:</p> <ol style="list-style-type: none"> <li>1. B&amp;P Code section 6140.9, addressing the portion of the licensing fee that supports LAP, will need to be amended to reflect distribution to another entity and may need to address contractual requirements for performance measures.</li> <li>2. B&amp;P Code section 6231(a), which references a committee, its composition, and requires the committee to oversee operation of the program, will need to be deleted.</li> <li>3. B&amp;P Code section 6231(b), which references the terms of the committee members (4 years), will need to be deleted.</li> <li>4. B&amp;P Code section 6231(c), which</li> </ol>

## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

<p>Under this option, the LAP Oversight Committee would be eliminated.</p>	<p>references the adoption of rules and regulations by the committee, will need to be deleted.</p> <ol style="list-style-type: none"> <li>5. B&amp;P Code section 6232(a), which references the adoption of rules and regulations by the committee, will need to be amended.</li> <li>6. B&amp;P Code section 6232(d), which pertains to voluntary referrals will need to be deleted.</li> <li>7. B&amp;P Code section 6234, which pertains to confidentiality, references a subcommittee. It will need to be amended.</li> <li>8. B&amp;P Code section 6235(a) allows the State Bar to charge a reasonable administrative fee to participants for the purpose of offsetting the costs of maintaining the program. Depending on sub-option selected, it may need to be eliminated or amended to state that some of the funding from administrative fees will be distributed to the entity performing these services or provide that such entity may charge administrative fees.</li> <li>9. B&amp;P Code section 6236, which pertains to outreach activities to members and the legal community, may need to be deleted, depending on the option selected.</li> <li>10. B&amp;P Code section 6238, which references a report to the BOT and the Legislature to be filed annually, will need to be updated to reflect what the State Bar would be reporting to the Legislature.</li> </ol> <p>The following State Bar Rules will need to be</p>
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## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

	<p>deleted or revised:</p> <ol style="list-style-type: none"> <li>1. State Bar Rule 3.241 provides for a committee of twelve (12) members, six of whom are appointed by the BOT as required by B&amp;P Code section 6231. The rule will need to be deleted.</li> <li>2. Rule 3.242 sets forth the duties of the oversight committee. The rule will need to be deleted.</li> <li>3. State Bar Rules 3.245 and 3.246 pertain to participation in an orientation and assessment in order to participate in the voluntary LAP Program, as well as the application process for that program. References to the voluntary program will need to be eliminated.</li> <li>4. State Bar Rule 3.247 references “Support LAP.” This rule will need to be deleted.</li> <li>5. State Bar Rule 3.248 references “Monitored LAP.” Need to remove the “monitored” label and the entire program will be known as LAP.</li> <li>6. State Bar Rule 3.249 pertains to completion of LAP. Need to reevaluate criteria if we move to a drug court model.</li> <li>7. State Bar Rule 3.252 describing the committee’s role in the financial assistance program will need to be revised.</li> </ol> <p>Will need new rules that set forth the requirements for a separate entity outside the State Bar that would (1) manage self-referrals as a contractor subject to administration by the State Bar, or (2) take over the program subject to performance standards established by the State Bar.</p>
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## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

<p>2. Separate the entire LAP from the State Bar.</p> <p>Sub-options:</p> <ol style="list-style-type: none"> <li>State Bar continues to be statutorily required to have a program, but State Bar contracts out for the program. Ongoing State Bar involvement to include day-to-day contract management, responsibility for the services, operations, etc.</li> <li>State Bar no longer statutorily required to have a Lawyer Assistance Program; the functions as a whole are contracted out to another entity. Ongoing State Bar involvement limited to transfer of licensing fee revenue, review of required reporting, periodic re-bidding to ensure licensing fee revenue being used appropriately.</li> </ol> <p>Under this option, the LAP Oversight Committee would be eliminated.</p>	<p>LAP is reference is B&amp;P Code Sections 6230-6238. Depending upon the sub-option that is chosen, some or all of those sections will need to be deleted or amended, including the following:</p> <ol style="list-style-type: none"> <li>The program is established by B&amp;P Code section 6230. Amend to describe the separation of the program from the State Bar depending upon the sub-option selected.</li> <li>B&amp;P Code section 6231(a), which references a committee, its composition, and requires the committee to oversee operation of the program, should be deleted.</li> <li>B&amp;P Code section 6231(b), which references the terms of the committee members (4 years), should be deleted.</li> <li>B&amp;P Code section 6231(c), which references the adoption of rules and regulations by the committee, should be deleted.</li> <li>B&amp;P Code sections 6232(a), which pertains to criteria for participation in LAP, references the adoption of rules and regulations by a committee. It will need to be amended.</li> <li>B&amp;P Code Section 6234, which pertains to confidentiality, references a committee. It will need to be amended.</li> <li>B&amp;P Code section 6235(a) allows the State Bar to charge a reasonable administrative fee to participants for the purpose of offsetting the costs of maintaining the program. Depending on sub-option selected, it may need to</li> </ol>

## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

	<p>be eliminated or amended to state that some of the funding from administrative fees will be distributed to the entity performing these services or provide that such entity may charge administrative fees.</p> <p>8. B&amp;P Code section 6238, which references a report to the BOT and the Legislature to be filed annually, will need to be updated to reflect what the State Bar would be reporting to the Legislature.</p> <p>LAP is covered by State Bar Rules, Title 3 (Programs and Services), Division 2 (Attorney Members), Chapter 5 (Lawyer Assistance Program), Rules 3.240-3.252.</p> <p>Those State Bar Rules will need to be deleted or revised if we separate LAP from the State Bar, including the following:</p> <ol style="list-style-type: none"><li>1. State Bar Rule 3.421 provides for a committee of twelve (12) members, six of whom are appointed by the BOT as required by B&amp;P Code section 6231. The rule will need to be deleted.</li><li>2. Rule 3.242 sets forth the duties of the oversight committee. The rule will need to be deleted.</li><li>3. Rules 3.244, 3.245 and 3.246 pertain to eligibility, orientation and assessment, and application to the program. Determine whether these same rules will apply or create new criteria depending upon where the LAP goes.</li><li>4. State Bar Rule 3.249 pertains to completion of LAP. May need to reevaluate criteria depending upon where LAP goes. Another organization may have different criteria.</li></ol>
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## Attachment C – Statutes and Rules Implicated in Implementation of Subentity Recommendations

	Will need new rules that set forth the requirements for an organization outside the State Bar to (1) perform the services pursuant to State Bar requirements, or (2) administer the program subject to performance measures established by the State Bar.
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November 9, 2018

*Via Messenger*

Board of Trustees  
State Bar of California  
845 S. Figueroa Street  
Los Angeles, California 90017

**Re: Request for Reconsideration**

Dear Board of Trustees:

On behalf of the all members of the Lawyer Assistance Program (LAP) Oversight Committee, I address this letter to you and ask for your open mindedness.

The future structure of the Lawyer Assistance Program was voted upon at the last Board of Trustees ("BOT") meeting. There were three options and the Board of Trustees chose to reject Option 1. Instead, the BOT requested further information about potential implementation plans for both Option 2 and Option 3. We ask that you reconsider retaining the full Lawyer Assistance Program within the State Bar (Option 1).

Simply put, Option 2 separated the "voluntary" referrals from the LAP program housed within the State Bar while retaining the disciplinary and moral character referrals and Option 3 separates the entire Lawyer Assistance Program from the State Bar.

The Oversight Committee was asked to assist in developing high-level implementation plans for Option 2 and Option 3. In good faith, the Oversight Committee provided input, in several phone calls with staff and in a specially-set meeting, for the sole purpose of discussing these implementation plans. The Oversight Committee's input on Options 2 and 3 will be presented to you by staff.

To be very clear – The people involved in this good faith effort include licensed clinical mental health professionals, lawyers, people in recovery, judicial officers, and the preeminent authority on lawyer assistance programs (Patrick Krill). The Oversight Committee came to the conclusion that the any separation of the Lawyer Assistance Program from the State Bar is fraught with more problems than continuing the program in its present form.

Furthermore, the Oversight Committee took seriously the task to develop and recommend a plan of action reflecting either Option 2 or 3 and made a good faith effort to make a recommendation between the two options.

The Oversight Committee does **NOT** support separation of the Lawyer Assistance Program (“LAP”) from the State Bar in any form.

Option 1 is best for LAP, for the lawyers of California and for the protection of the public. Retain the Lawyer Assistance Program within the State Bar and clarify the charge and responsibility of the Oversight Committee and do so in good faith.

**As such, the Oversight Committee is requesting that the Board of Trustees reconsider their decision.**

#### **Option 1 – Is the Expert’s Choice**

The State Bar engaged the services of Patrick Krill, the premier expert on substance use and mental health disorders among the lawyer population, to provide an opinion on LAP’s separation from the State Bar. The proposed scope of work on the Appendix I Review was 100 hours and the overall purpose and goal of the work was “to arrive at an informed, considered and actionable determination regarding whether the LAP should be retained within the State Bar. The LAP and State Bar budgeted over \$150,000.00 for Mr. Krill’s work. After interviewing the Oversight Committee members, surveying and analyzing approaches of other states, and consulting, interviewing LAP directors of other states, and taking into consideration the program’s faults such as “under utilization,” Krill’s opinion is as follows: *“LAP would be best served by remaining as part of the State Bar for the time being.”*

#### **Option 1-Is the Clinical Staff’s Choice**

The LAP’s clinical staff are advocating for the LAP (in its entirety) to remain as is within the State Bar, in order to allow access to services for disciplined attorneys, non-disciplined attorneys, Committee of Bar Examiners referrals and law students. They strongly believe that the services the LAP offers protects the public and serves the mission of the State Bar of California.

Clinical staff noted that even outsourcing part of the services of the LAP is problematic, because many interventions occur prior to the onset of formal disciplinary action. Staff believes that the relationships formed at the early stages with participants promotes rehabilitation. Furthermore, outsourcing is not as flexible or individualized as the LAP. Outsourced monitoring programs today are very rigid and require participants to keep

random drug testing in place even after it has been established that the participant does not have a substance use diagnosis.

Clinical staff recommends Option 1.

### **The Judiciary Reliance on LAP Licensed Professionals**

The judiciary has made it clear that they require licensed clinical professionals involved in the disciplinary process. The judiciary relies on the clinical expertise of the licensed professionals of the LAP.

### **Changes Implemented by the Oversight Committee Have Increased Voluntary Participation and Participant Confidence in the LAP.**

As a direct result of the LAP's strategic plan, outreach efforts have increased voluntary participation in the LAP. In March 2018, the LAP finally, after years of asking for approval to have such a position, hired a person to perform Education and Outreach. In a three-month span, this staff member has performed 12 presentations, reaching 994 law students and lawyers. During the months of these outreach efforts, 68 potential participants called and 52 became participants; a higher rate of retention than during the previous time period last year.

Staff has also relayed increased confidence in the LAP by participants, in particular, regarding the Clinical Review Team model. The Clinical Review Team model was implemented by LAP after the old model of an Evaluation Committee was eliminated. As a direct result of these changes, participants noted that they felt the Clinical Review Team model was a better process and more functional. Thus, since the Appendix I Review has been performed and as a direct result of implementations made by the Oversight Committee, the LAP has performed better.

The program is "ahead of the curve" dealing with the ugly stigma of drug and alcohol abuse and recovery. The American Bar Association would applaud our new initiatives dealing with privacy, education and outreach. LAP now has its own stand alone offices apart from the State Bar offices.

The Education and Outreach coordinator has had very positive reactions from the students and the law schools. The outlook is extremely good in educating students early on the services of LAP and that help is there for them.

All of this is important to consider as a key reason for reconsideration. The Oversight Committee has for years asked for an Education and Outreach person to do the things now being done. Proper utilization is also a function of the Board of Trustees and

Executive Management cooperating in good faith to get things reasonably requested to promote the program.

### **Elimination of Option 1 Will Destroy LAP Operations**

Operation of the LAP relies on staff institutional knowledge and morale. The impact on staff cannot be ignored. The uncertainty of the future of the LAP has destroyed staff morale. Under either Option 2 or Option 3, staff will either be reclassified from their current job classifications, for some from Clinical Rehabilitation Coordinator to a general Analyst, or some staff may leave LAP all together. This will damage the operations of LAP. Clinical Rehabilitation Coordinators are licensed clinicians who work with monitored participants. Their role is not to merely check boxes and push paper. They must evaluate the participants through their participation in the program and through their conversations. This is a specialized job. New staff would have to be hired and trained and trained by persons potentially new to the LAP. This will affect the services that LAP does provide and will affect those services to the detriment of the participants and ultimately the public.

### **What Happens If the Legislature or the Governor Does Not Approve These Changes?**

The LAP and the Oversight Committee are statutorily created and thus the implementation of Option 2 or 3 will require not only approval with the Legislature but also the Governor's signature. Furthermore, the earliest any proposed legislative changes would be even presented to the Legislature is February 2019. Even with a clean and clear passing through the Legislature and the Governor's signature, the earliest any changes to the LAP could be implemented is the summer of 2019. So, in the meantime, from November 2018 to the summer of 2019, for seven months, what happens to the LAP? Who will oversee the implementation of the strategic plan? Who will monitor the progress of the LAP's Education and Outreach efforts? Presumably, the Oversight Committee will perform these duties; however, the BOT's decision to freeze appointments to the LAP severely prejudices the program.

The Oversight Committee can't do its business and complete its tasks with reduced numbers and with reduced outreach and connection to other bodies and those that have appointment powers. This effectively reduces the voice of the LAP and the contributions to the evolution of the program. This prejudices those bodies that have appointments that should have been made, and the ripple effects of that loss of communication and working together affect the ability to go out and serve members and the public in prevention and recovery.



The BOT should allow the Oversight Committee to run the LAP, and approvals should not be unreasonably withheld and that all pending proposals of the Oversight Committee are approved at this time.

**Leave it to the experts. The oversight Committee is comprised of experienced experts in the field(s) necessary to run the LAP. They are charged with the oversight of the LAP. Organization, administration, program content and outreach are included. The Board of Trustees does not claim such expertise. The Board of Trustees is charged with reviewing and approving the Oversight Committee's actions and recommendations. This can be a very productive and symbiotic relationship if allowed to perform as envisioned. We wish to prove this through a good working relationship with the Board. Please let us do that. Please approve Option 1 at this time; and revisit in one year.**

This letter is an effort to recognize all the various points of views that came up during the discussions to try to develop an implementation plan for either Option 2 or 3. Separation of the LAP from the State Bar is not supported in any form.

**And so, with all due respect and humility, Oversight Committee is requesting that the Board of Trustees reconsider their vote on Option 1 and approve Option 1.**

The Lawyers Assistance Program Oversight Committee



Stewart Hsieh  
Chair

cc: The Oversight Committee Members  
Leah Wilson, Executive Director, State Bar of California