



The State Bar of California

OPEN SESSION AGENDA ITEM 54-111 JANUARY 2019 BOARD EXECUTIVE COMMITTEE III.B

DATE: January 25, 2019

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

FROM: Kimberly DaSilva, Attorney II, Mission Advancement & Accountability

SUBJECT: Approval and Ratification of Revised Board Book

EXECUTIVE SUMMARY

This agenda item presents the revised Board Book for approval by the Board Executive Committee and ratification by the Board of Trustees. This version of the Board Book is presented without appendices, pending their finalization. Appendices will be presented as a single unit for approval and ratification at future Board Executive Committee and Board meetings.

BACKGROUND

Origin of the Board Book

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 operation of the Board and its oversight of the Bar. Unfortunately, the addition of resolutions for over a decade made the manual unwieldy. At approximately 275 pages, the existing Board Book is subdivided into various "tabs," "articles," and "sections" based upon efficiency of updating, instead of its content and accessibility to the reader.

History of the Revision

In July 2015 the Board requested a review and revision of the Board Book which began with discrete portions and culminated in this revision. In June of 2018 the State Bar contracted with Cindi Christenson, a retired public sector executive with experience writing board manuals, who helped turn the Board Book into a more accessible tool. The revised Board Book retains

essential information from the existing manual regarding governing authority, meeting procedures, Board composition, fiscal oversight, legislation, staffing and expense reimbursement, but its presentation is significantly more summary, focusing on information directly relevant to Board members. Material from the existing Board Book that relates to the work of State Bar staff will be retained in staff manuals. Outdated versions of the Board Book will be maintained for historical research.

DISCUSSION

Purpose of the Revised Board Book

The revised Board Book, about which the Board Executive Committee and the Board have been updated throughout the revision process, is intended to eliminate unnecessary and redundant information and to ensure that the manual is a useful resource to members of the Board when performing their role furthering the mission of the State Bar. Please see Attachment A, the revised Board Book.

Overview

The revised Board Book is organized into 11 sections, including:

- Section 1 – State Bar of California
- Section 2 – Board of Trustees
- Section 3 – Meeting Procedures
- Section 4 – Subentities of the State Bar
- Section 5 – Board Planning and Fiscal Oversight
- Section 6 – Legislation and Rulemaking
- Section 7 – Staffing
- Section 8 – Communication
- Section 9 – Expense Reimbursement
- Section 10 – Board Member Training
- Section 11 – Guidelines and Procedures

The revised Board Book presented here is nearly identical to the item presented during the update at the committee's November meeting. Please see attachment B, the Board Book Update from the November 2018 Board Executive Committee meeting, for a section by section description of the changes made to the revised Board Book. The most significant change in the item presented here is the addition of Section 4, on Subentities. Other differences include the addition of a new State Bar e-mail policy and technical corrections. Hyperlinks will also be added to the manual and the manual will be returned to Ms. Christenson for cleanup and copy-editing following approval and ratification of the substance of the revisions.

Section 4, Subentities of the State Bar

New Board Book Material on Subentities

Subentities consist of State Bar volunteers that support and advise the Board. The Board and the State Bar often work to fulfil their public protection mission through subentities, including committees, commissions, task forces and other advisory bodies, in alignment with Goal 3 of the Strategic Plan, to improve the operational management of the State Bar. Section 4 was withheld from the previous version of the Board Book because work related to the Governance in the Public Interest Task Force, Appendix I, subentity review had not been completed. In September and November of last year, the Board made decisions regarding subentity composition and governance flowing from Appendix I recommendations which allowed staff to complete this section of the Board Book.

New Subentity Rules

Board resolutions flowing from Appendix I recommendations created new rules for subentities regarding volunteer appointment, term limits, selection of officers, the requirement of sunset reviews and a presumptive limitation on subentity size. Volunteers are appointed, either by the Board or by outside appointing authorities like the Judicial Council, for a term of 4 years. Twice every year the Board Executive Committee recommends to the Board volunteers for appointment to subentities. Officers are appointed from among the subentity volunteers by the Board to serve one-year terms.

To prevent their unnecessary proliferation subentities may only be created or continued if there is work for them to do. Similarly, volunteers may only be appointed to subentities if there is work for the subentity. All subentities will be subject to sunset reviews every 5 years beginning in 2023.

Subentities are limited to 7 volunteers unless a specific exception applies or unless a justification is established for a larger size based on workload or need for representation.

Delay in the Board Book Appendices

As described in the November 2018 Update, the revised Board Book will include appendices on the following subjects:

- Strategic Plan
- Board Membership
- Board Liaisons
- Board Committee Structure Matrix
- Standing Committee Charters
- Ad Hoc Committees
- Subentity Charters
- Calendar of Board Meetings

- Essentials for Chairing a Meeting
- Bagley-Keene Open Meeting Act
- Travel and Business Related Expense Policy
- Member Expense Report Form
- Public Member Reimbursement Form
- Travel Store Registration
- Travel Store Instructions
- Conflict of Interest Policy Authority
- Incompatible Activities Policy
- Glossary of Common Acronyms

While these appendices will be an integral component of the revised Board Book, some of the material cannot yet be finalized. One of the appendices still in development, in conjunction with a staff manual memorializing administrative practices related to Board management, is a detailed calendar of Board meetings. Another appendix, listing subentities and their charters, cannot be completed until subentities make recommendations to the Board. An updated Strategic Plan will also be included, based upon the Board's January meeting. To keep the revision process as transparent as possible, staff withheld all of the appendices from this item and will present them as a single unit at future meetings, rather than in a piecemeal fashion. The purpose of presenting all of the appendices for approval and ratification as a single item at future meetings is to avoid confusion.

Revised Board Book Highlights

With the exception of the e-mail policy, the following material was included in the November revision but merits highlighting. Pages noted in parentheses following these bullet points correspond to the revised Board Book.

- Articulation of State Bar Conflict of Interest Policy – While not a new policy, the State Bar's Conflict of Interest Policy has been rewritten and clarified. (p. 24- 26)
- Consolidation of Board, Chair and Vice-Chair Responsibilities – Responsibilities are specifically set forth. (pp. 3-5)
- Clarification of application of the Bagley-Keene Open Meeting Act – Board members and staff often had questions regarding how to comply with the open meeting requirements of Bagley-Keene. This section answers the most common of those questions. (p. 7)
- Board meeting agenda development – By State Bar Rule, the Secretary and Board Chair are designated to develop the agenda. However, in practice the Executive Director plays an active role guiding the secretary in that work and conferring with the Chair. The revised Board Book memorializes the Executive Director's role in Board meeting agenda development. (p. 8)
- Performance Evaluations – The revised Board Book articulates new evaluation procedures for the Executive Director, General Counsel and the Chief Trial Counsel. The new procedures require performance evaluations within 90 days of the respective anniversary dates based on plans provided within 90 days of appointment. (pp. 20-22)

- New State Bar e-mail policy – Brand new to the State Bar and, thus, to the revised Board Book is the State Bar’s e-mail policy. Board members are now required to use official State Bar e-mail addresses when conducting State Bar business. (p. 22) Please see Attachment C, Proposed State Bar E-mail Policy.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

Revised Board Book

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.

RECOMMENDATIONS

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

RESOLVED, that the Board Executive Committee approves and the Board of Trustees ratifies the revised Board Book without the detailed appendices, pending their finalization. Appendices to the Board Book will be presented as a single unit for approval and ratification at future Board Executive Committee and Board meetings; and it is

FURTHER RESOLVED, that the Board Executive Committee has the authority to approve technical changes to the revised Board Book without the need for ratification of such changes by the Board of Trustees.

ATTACHMENT(S) LIST

- A.** Revised Board Book, not including appendices
- B.** Board Book Update from November 2018 Board Executive Committee meeting
- C.** Proposed State Bar E-mail Policy

BOARD BOOK

State Bar of California

SECTION 1. STATE BAR OF CALIFORNIA

Overview

The State Bar of California (hereafter referred to as the State Bar) was created in 1927 as a public corporation and was placed in the Judicial Article of the California Constitution in 1966. It was created to assist the Supreme Court in matters pertaining to the admission, regulation, and discipline of attorneys.

Governing Authority

The governing authority for the State Bar to carry out its role can be found in:

- State Bar Act (Bus. & Prof. Code section 6000 et seq.)
- California Rules of Court (Cal. Rules of Court, Title 9)
- Rules of the State Bar
- Supreme Court Jurisprudence

Mission

The State Bar'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. Diversity and inclusion are an integral part of the State Bar's public protection mission to build and retain a profession of attorneys capable of providing high-quality legal services and representative of the rich diversity of California's population.

SECTION 2. BOARD OF TRUSTEES

Composition

The State Bar is governed by its Board of Trustees (Board). The Board once consisted of 19 members but under the terms of Senate Bill 36 (2017) will transition to a 13-member body by October 31, 2020. The transition will occur through attrition, upon the expiration of the terms of the elected attorney members.

Five attorney members are appointed by the Supreme Court; one attorney member and one public (non-attorney) member are appointed by the Speaker of the Assembly; and one attorney member and one public member are appointed by the Senate Committee on Rules. Four public

members are appointed by the Governor and are subject to Senate confirmation. See Appendix A for the current Board Membership.

Member Appointing Authority	Attorney Member	Public Member (Non-Attorney)
California Supreme Court	5	0
Speaker of Assembly	1	1
Senate Committee on Rules	1	1
Governor	0	4

The Trustees Nominating Committee is responsible for ensuring that individuals nominated for appointment to the Board by the Supreme Court are evaluated objectively. State Bar staff collects information on Board members to ensure a diverse Board with the skills necessary to guide the work of the State Bar.

(Source: Bus. & Prof. Code §§ 6010, 6011, 6013.1, 6013.3, 6013.5; Cal. Rule of Court 9.90)

Board Member Terms

Each member is appointed for a term of four years. Rules regarding reappointment depend on the appointing authority and whether the member is an attorney or a public member (non-attorney). Members appointed by the Supreme Court may be reappointed only once. There are no limitations on the reappointment of other members.

When a position becomes vacant it may be filled by the appointing authority with a person who will serve for the remainder of the term.

(Source: Bus. & Prof. Code §§ 6013.1, 6013.3, 6013.5, 6016)

Officer Selection

The officers of the State Bar are a Chair, a Vice Chair and a Secretary.

The Chair and Vice Chair are appointed by the Supreme Court for one-year terms and may serve up to two terms in this capacity. Officers assume the duties of their respective offices at the conclusion of the annual meeting following their appointment, typically in September. In the event that an officer is appointed to fill a vacancy for the balance of the term, the remainder of that term does not count against the two-term limit.

Members interested in serving as an officer should submit a letter of interest to the Supreme Court by July 1st and provide an electronic copy of the submission to the Principal Attorney for the Chief Justice. State Bar staff sends a reminder announcement to Board members prior to the deadline.

The Secretary is an employee of the State Bar and has no voting rights. The Secretary is selected by the Board annually upon recommendation by the Executive Director.

(Source: Bus. & Prof. Code §§ 6020, 6021, 6022, 6023; State Bar Rule 6.42)

Resignation of Board Members

A Board member may resign at any time by giving written notice to the Secretary. The resignation will be effective upon receipt of that notice or on the date specified in the notice.

(Source: Gov. Code § 1750)

Rules of Conduct

- Board members actions shall serve to uphold the statutorily defined responsibilities and mission of the State Bar
- Board members shall act fairly, be nonpartisan, impartial and unbiased in their role of protecting the public
- Board members shall not speak or act for the Board without proper authorization from the Board Chair
- Board members shall maintain the confidentiality of confidential documents and information received
- Board members shall commit the time to prepare for Board responsibilities
- Board members shall recognize the equal role and responsibilities of all Board members
- Board members shall treat all applicants and licensees in a fair and impartial manner
- Board members shall not use their positions on the Board for personal, familial, or fiduciary gain
- Board members shall treat State Bar staff with respect and courtesy and address any matter regarding a State Bar employee with the Executive Director

Responsibilities of the Board

The Board is the State Bar's governing body, responsible for developing the guiding policies and principles underpinning its mission. Among its responsibilities the Board provides guidance and feedback to the Executive Director to ensure effective management and leadership of the State Bar.

Responsibilities of the Board also including, but not limited to:

- Governing the State Bar through collective policy-making
- Developing the guiding policies and principles underpinning the State Bar's regulatory mission
- Adopting the State Bar's Strategic Plan
- Approving the State Bar's budget
- Receiving and approving statutorily mandated reports

- Hiring, evaluating and terminating the employment of the Executive Director and the General Counsel
- Appointing a Chief Trial Counsel subject to confirmation by the State Senate
- Assuring the adjudicatory independence of the State Bar Court
- Appointing volunteers to State Bar committees, commissions, task forces, and other advisory bodies referred to herein as State Bar subentities

Each Board member is responsible for:

- Being familiar with the mission and purpose of the State Bar
- Participating in all Board meetings and meetings of assigned Board subcommittees, including preparing for meetings in order to make sound decisions on behalf of the State Bar and its stakeholders
- Being familiar with the existing governance structure of the Board so that each member can establish good working relationships with one another and staff
- Participating in the annual budgeting process
- Being knowledgeable about conflict of interest standards and ensuring that reportable conflicts are specifically identified and acknowledged in formal filings and at Board meetings
- Being familiar with the guidelines for member communication contained in Section 8 of the Board Book
- Being prepared to represent the State Bar in any setting or forum and being able to explain the State Bar's responsibilities, initiatives, accomplishments and capabilities
- Bringing diverse experience, skills and expertise to bear when determining policy
- Attending swearing-in ceremonies of new attorneys

Calendar of Board Meetings:

The annual meeting calendar for the Board of Trustees is determined by the due dates for statutorily mandated reports that assist the Board in fulfilling its oversight responsibilities, by the planning and implementation of the Strategic Plan initiatives, and by the Board's ongoing oversight responsibilities. The meeting dates when these events occur are provided in detail in Appendix B.

Responsibilities of the Chair:

The Board Chair:

- Presides over Board meetings. See Appendix C, Essentials for Chairing a Board Meeting
- Facilitates decision-making by the Board
- Encourages diverse opinions of Board members
- Ensures that the Board focuses on the Strategic Plan Goals and Objectives
- Keeps the Board informed and aware of policy issues that may affect the functioning of the State Bar

- Resolves disputes and manages conflict among Board members
- Appoints Board members to serve as liaisons to State Bar standing committees
- Appoints Board members to serve as liaisons to functional areas of the agency's operation
- Presides over the Executive Committee and the Governance in the Public Interest Task Force
- Acts as the key spokesperson on behalf of the Board regarding the annual performance evaluation and the hiring and firing of the Executive Director
- Acts as the key spokesperson for the Bar and is accountable for what is officially communicated by the Board and the State Bar to licensed attorneys in California, to the public and to the government
- Performs other duties as prescribed by the Board and provided by law

(Source: Bus. & Prof. Code § 6001.2; State Bar Rule 6.40; Board Resolutions October 1987, May 1997, June 2006, May 2010, January 2011, March 2013, July 2014, September 2014, September 2017, January 2018)

Responsibilities of the Vice-Chair

The Vice-Chair:

- Acts in the absence of the Chair
- Serves as the Vice-Chair of the Executive Committee
- Serves as the Chair of the Regulation and Discipline Committee

(Source: Bus. & Prof. Code § 6021; State Bar Rule 6.41; Board Resolutions May 2013, September 2016, January 2018.)

Board Liaisons

The Chair may appoint members of the Board to serve as liaisons to State Bar subentities, and task forces, as well as to State Bar functional areas of operation. Board liaisons are responsible for facilitating the exchange of information between the Board and those subentities, task forces and areas of operation. See Appendix D for a list of current Board Liaisons.

Standing Committees

Standing committees, composed only of Board members, are responsible for State Bar oversight and policy development through the strategic planning process and development of Committee Work Plans. The Board of Trustees has five (5) standing committees: Regulation and Discipline Committee, Programs Committee, Audit Committee, Finance and Planning Committee, and Board Executive Committee.

Each standing committee must have at least five (5) members. The incoming chair presents and proposes committee chairs and appointments to committees after consulting with the outgoing

Board Executive Committee and subject to approval by the Board. See Appendix E for Board Standing Committee Charters.

(Source: Board Resolutions September 1991, August 2000, November 2000, October 2001 May 2010, August 2017.)

Regulation and Discipline Committee

The Regulation and Discipline Committee oversees the work of a number of State Bar functional areas and subentities including: the Office of the Chief Trial Counsel, the State Bar Court,¹ the Office of Probation, the Client Security Fund Commission, the Lawyer Assistance Program Oversight Committee, and the Office of Professional Competence. See the Board Committee Structure Matrix in Appendix H.

Programs Committee

The Programs Committee also oversees the work of a number of State Bar functional areas and subentities. The Programs Committee oversees the work of the Office of Access and Inclusion, the Office of Admissions, Attorney Regulation and Consumer Resources, the Committee of Bar Examiners, Legal Services Trust Fund, and California Commission on Access and Fairness. See the Board Committee Structure Matrix in Appendix H.

Audit Committee

The Audit Committee is charged with assisting the Board of Trustees in fulfilling its oversight responsibility as related to the integrity of accounting and financial reporting processes, the system of internal controls, and audit processes. In addition, the Audit Committee is charged with overseeing risk management and compliance efforts. The Audit Committee should include at least one public member of the Board of Trustees.

Finance and Planning Committee

The Finance and Planning Committee develops and leads the Board's participation in all State Bar planning, including strategic planning and governance review, and budget preparation.

Board Executive Committee

The Board Executive Committee is responsible for the effective functioning of the Board of Trustees, maintenance and development of the Board of Trustees–Executive Director working relationship, and oversight of certain high-level operational matters including legislative liaison, and appointments of volunteers to subentities.

¹ State Bar Court Judges are not State Bar employees and are not subject to Executive Director or Board administration. They are appointed by the Supreme Court, Legislature, or Governor pursuant to statute for set terms. Their salary rates are established by statute. The Rules & Regulations Pertaining to the Service of State Bar Court Judges otherwise establish their terms and conditions of employment. The State Bar (through its Executive Director) must provide the State Bar Court with adequate supporting staff and facilities and conduct itself otherwise to assure the adjudicatory independence of the State Bar Court.

Governance in the Public Interest Task Force

The Governance in the Public Interest Task Force is a 7-member, statutorily mandated body composed entirely of Board members. It is convened every three years to prepare and submit a report to the California Supreme Court, governor, and the Assembly and Senate Committees on Judiciary. The report must include its recommendations for enhancing the protection of the public and ensuring that protection of the public is the highest priority in the licensing, regulation and discipline of attorneys. Beginning in 2011, a report is due every three years on May 15. The Governance in the Public Interest Task Force will be convened again in 2019, 2022, 2025, and 2028 to produce reports for 2020, 2023, 2026, and 2029.

(Source: Bus. & Prof. Code § 6001.2)

SECTION 3. MEETING PROCEDURES

Bagley-Keene Open Meeting Act

All meetings of the Board of Trustees and its standing committees and State Bar subentities, except for the Commission on Judicial Nominees Evaluation (JNE) and the JNE Review Committee, are subject to the Bagley-Keene Open Meeting Act (“Bagley-Keene”). See Appendix G for the full text of Bagley-Keene. This Act sets forth notice and agenda requirements, provides for public comment, requires that meetings be conducted in open session (except where closed session is expressly authorized), and prohibits discussing or taking action on matters not included on the agenda. The provisions in this Board Book concerning meeting procedures are intended to restate and supplement Bagley-Keene. To the extent any provision in the Board Book may be inconsistent with Bagley-Keene, Bagley-Keene shall control.

(Source: Gov. Code § 11120 et seq.; Bus. & Prof. Code §§ 6026.7, 6026.5)

State Bar Meetings

State Bar meetings include meetings of the Board, Board subcommittees, and State Bar subentities.

Meeting Frequency

The full Board of Trustees meets at least six times each year. The meeting schedule can be found at www.calbar.ca.gov.

Meeting Locations

In-person State Bar meetings must be held at the State Bar offices in San Francisco or Los Angeles, unless a quorum of the Board votes to meet elsewhere in California.

(Source: State Bar Rule 6.91)

Board Member Attendance at Board Meetings

Board members shall, to the extent practicable, attend all Board meetings. Board members unable to attend a meeting should contact the Board Chair, Executive Director or the Board Secretary.

Quorum

A quorum of the Board and its standing committees or subcommittees is a majority of the appointed members. In order for the Board to take action, there must be a quorum. Assuming there is a quorum, a majority vote of those present at the meeting generally controls.

Agendas

The Executive Director and Board Secretary prepare agendas for Board meetings in consultation with the Board Chair. Board members may submit recommended agenda items to the Chair for consideration as soon as practicable but at least 15 days prior to the scheduled meeting.

(Source: State Bar Rule 6.42)

Notice of Meetings

Meeting notices are posted on www.calbar.ca.gov at least 10 calendar days in advance of the meeting. The notice will include the time, date and location of the meeting, as well as the name, address, and telephone number of a staff person who can provide further information prior to the meeting.

The notice will include an agenda of items that will be acted upon or discussed at the meeting. Items may not be added to the agenda after the 10-day notice period except under very limited circumstances as permitted by the Bagley-Keene Open Meeting Act. Agenda items may, however, be withdrawn at any time prior to the meeting.

(Source: Gov. Code § 11120 et seq.)

Closed Session

All matters discussed in closed session are confidential. Members of the public are not allowed in the meeting room during closed session.

The Bagley-Keene Open Meeting Act sets forth the following examples of matters that can be considered in closed session are:

- Certain personnel matters, such as the appointment, evaluation or dismissal of Board-appointed staff
- California Bar Examination matters, such as the preparation, approval, grading or administration of examinations
- Anticipated and pending litigation
- Collective bargaining

(Source: Gov. Code § 11126; Bus. & Prof. Code § 6026.7)

Breach of Confidentiality During Closed Session

All matters discussed during a closed session portion of a State Bar meeting are confidential. An investigation by the Board will be conducted to determine whether an alleged breach of confidentiality has occurred and the Board may privately or publicly censure the individual if it is determined that a breach of confidentiality has occurred. The Board also will take the necessary steps to preserve the position, resources and assets of the State Bar should any litigation or other source of liability against the State Bar arise from the breach of confidentiality.

(Source: Bus. & Prof. Code § 6044; Board Resolution August 2000.)

Record of Meetings

Minutes of topics discussed and decisions made at Board meetings shall be maintained by the Secretary of the Board.

A designated staff person will attend the closed session to record topics discussed and decisions made. The minutes of a closed session are maintained by a designee of the Executive Director or, if a violation of the open meeting requirements is alleged, to the court having jurisdiction over the dispute.

(Source: Gov. Code § 11126.1; State Bar Rule 6.42)

Voting on Motions

A roll call vote will be taken after each motion. Members' names will be called and each member will state their vote for the motion as follows:

- Support – Yes or Aye
- Oppose – No or Nay
- Abstain (not counted as a vote)
- Recused (not counted as a vote)

At in-person meetings “substitution of the roll” is allowed as long as there has been no change in the composition of the body since the last vote or since the call of roll and all members are in agreement. “Substitution of the roll” allows the Board to take action without a roll call vote but, instead, by affirmation of those present without objection.

Substitution of the roll is not permitted at meetings that are held by video- or telephone-conference.

Meeting Rules

The State Bar will use Robert's Rules of Order, to the extent they do not conflict with state law (e.g., Bagley-Keene Open Meeting Act), as a guide when conducting its meetings.

Restriction of Attendance at Board Committee Meetings

Board members who are not committee members may attend committee meetings; however, they may not sit on the dais with the committee nor may they participate in the meeting other than as members of the public.

(Source: Gov. Code § 11122.5 (c)(6))

Audio/Visual Recording or Webcast

Audio and video of meetings of the State Bar may be recorded and/or broadcast live via the Internet (webcast).

Public Attendance at Board Meetings

Except for closed session, as described above, State Bar meetings are open to the public.

(Source: Gov. Code § 11120 et. seq.)

Public Comment

Members of the public are provided with the opportunity to address the Board or Board committee on each agenda item in open session, either prior to or during discussion of the item. The Chair has the discretion to determine when to hear public comment and to limit the amount of time devoted to public comment. The Bar will provide twice the time allotted to a non-English speaker who utilizes a translator.

(Source: Gov. Code § 11125.7)

Teleconference and Videoconference Meetings

When a member of the Board or a committee member participates in a meeting from a remote location, the location must be posted on the agenda 10-days prior to the meeting and that location must be accessible to the public. Votes taken during a teleconference must be by roll call.

(Source: Gov. Code § 11123)

Special Meetings

A special meeting with a 48-hour notice period may be called when compliance with the 10-day notice would impose a substantial hardship on the Board or where immediate action is required to protect the public interest. The special meeting may be called by the Board Chair, a Committee Chair, or by a majority of the Board or a Board committee.

The Bagley-Keene Open Meeting Act sets forth the following examples of special meeting justifications:

- Pending litigation
- Proposed legislation
- License applications and examinations
- Appointment of an interim executive director

(Source: Gov. Code § 11125.4; Bus. & Prof. Code § 6027)

Emergency Meetings

Under the Bagley-Keene Open Meeting Act an emergency meeting with a one-hour notice period may be held under two very limited circumstances:

1. Work stoppage or other activity that severely impairs public health or safety, or both;
2. Crippling disaster that severely impairs public health or safety, or both.

(Source: Gov. Code § 11125.5)

SECTION 4. SUBENTITIES OF THE STATE BAR

Subentities

The Board and State Bar management and staff often work to fulfil their responsibilities and achieve their public protection mission through subentities – councils, committees, and commissions – comprised of volunteers who provide support and advice to the Board in a number of areas. The subentities may be distinguished, in part, by the appointing authorities for volunteers. Some subentities are appointed exclusively by the Board while others are appointed by multiple appointing authorities. See Appendix I for subentity charters.

Appointments to Subentities

The State Bar solicits applications from volunteers to serve on subentities and seeks to ensure that the pool of candidates and the composition of the subentities are inclusive and broadly representative of the diversity of California's population.

Board appointed applicants are recommended to the full Board by the Board Executive Committee. Prior to that the Board Executive Committee's "appointments liaisons," review applications and supplemental material and make recommendations to the Board Executive Committee. All State Bar volunteers must be provided a formal orientation that includes, among other State Bar related topics, training on Bagley-Keene open meeting requirements, conflicts of interest, California Public Records Act, implicit bias and diversity.

Restriction on Appointments to Subentities

Advisors, ex officio members and consultants may not be appointed to State Bar subentities unless authorized by the Board of Trustees.

(Source: Board Resolution September 2018)

Subentity Year

For all subentities except the Commission on Judicial Nominees Evaluation, the year begins and ends at the conclusion of the annual Board meeting, typically in September, unless otherwise provided by law.

(Source: Board Resolutions September 1972, July 1986, August 1992)

Policy on Number of Subentities

A subentity may only be created if it has work to do. Similarly, a person may only be appointed to a subentity if the subentity has work assigned to it.

Presumption on Subentity Size

Unless a specific exception applies or a justification is established based on workload or need for representation, or otherwise provided by law, subentities will have no more than 7 members.

Sunset Review of Subentities

All subentities, except those subentities that are statutorily mandated, will be subject to sunset review every five years beginning in 2023. The sunset reviews will be conducted by the Board Executive Committee, which will make its recommendation to the full Board.

(Source: Board Resolution September 2018)

Selection and Term of Officers

Officers of subentities are appointed by the Board and serve one-year terms, with the possibility of reappointment.

Term of Membership

Members of subentities serve 4- year, staggered terms . Members may not serve more than a single term, except to permit service as Chair, Vice-Chair or Chair-Elect. Other exceptions include:

- (1) The terms for members of the Commission on Judicial Nominees Evaluation are one year; members may serve 3 consecutive terms subject to satisfactory evaluation by the Chair at the end of each year and may serve a fourth year as chair.
- (2) The 2 Board members of the Review Committee of the Commission on Judicial Nominees Evaluation are selected by the Board Chair at the start of each Board year and serve only 1 year terms subject to reappointment by the successor Board Chair.

(Source: Board Resolution November 2018)

Reappointment of Subentity Volunteers Filling Vacancies in Unexpired Terms

Unless statute requires otherwise, subentity volunteers appointed to fill a vacancy in unexpired terms of 1 year or less may be reappointed for an additional full 4-year term. Members appointed to fill unexpired vacancies of more than one 1 year are not eligible for reappointment, except to serve as an officer.

(Source: Board Resolutions November 1971, July 1989, April 1993, September 2004, July 2005.)

Subentities Appointed Exclusively By the Board**Committee on Professional Responsibility and Conduct**

The Committee on Professional Responsibility and Conduct addresses matters involving professional ethics and helps educate and provide guidance to attorneys, judges, and the public about the ethical duties of an attorney. The committee's work consists of drafting advisory opinions on issues of professional ethics and, studying and recommending changes to the Rules of Professional Conduct.

California Board of Legal Specialization

The California Board of Legal Specialization (CBLS) administers a program that certifies specialists in specific areas of law, identifying those attorneys who have demonstrated proficiency in specialty fields through certification, and encouraging attorney competence. The CBLS recommends program rules and provides policies and guidelines for certification of specialists; develops testing and legal education criteria for specialists; and advises the Board on establishment of specialty fields and appointment of advisory commissions.

Council on Access and Fairness

The Council on Access and Fairness advises the Board on advancing the State Bar's diversity strategies and goals along the diversity pipeline to enhance opportunities and advancement in the legal profession. The council serves as the State Bar diversity policy advisory committee.

Client Security Fund Commission

The Client Security Fund (CSF) reimburses clients who have lost money or property due to theft or an equivalent dishonest act committed by a California lawyer acting in a professional capacity. The commission reviews and rules on appeals of reimbursement decisions made by State Bar staff.

Commission on Judicial Nominees Evaluation

The Commission on Judicial Nominees Evaluation (JNE) assists the governor in the judicial selection process by providing independent, comprehensive, accurate and fair evaluations of candidates for judicial appointment and nomination.

(Source: Gov. Code § 12011.5.)

Review Committee of the Commission on Judicial Nominees Evaluation

The Review Committee of the Commission on Judicial Nominees Evaluation (RJNE) reviews requests from candidates seeking reconsideration of a "not qualified" rating by the JNE Commission. RJNE evaluates information pertaining to the investigation of the candidate and focuses on possible violations of rules or procedures.

Ad Hoc Committees

Ad hoc committees are established by the Board for the purpose of accomplishing a specific goal within a specified timeframe. Unless the Board extends the term of the ad hoc committee, these committees sunset automatically when they complete their work or at the end of their specified timeframe. Ad hoc committees can be composed of both Board members and volunteers. See Appendix F for a list of current ad hoc committees.

Subentities with Multiple Appointing Authorities**Committee of Bar Examiners**

The Committee of Bar Examiners oversees the California Bar Examination, moral character determination process and the First-Year Law Students' Examination. It makes recommendations for rules and guidelines governing admissions functions; recommends qualified applicants to the California Supreme Court for admission to practice law in California; accredits law schools; registers unaccredited law schools; and studies and reports on proposed changes in the law and other matters concerning requirements for admission to practice law in California.

Legal Services Trust Fund Commission

The Legal Services Trust Fund Commission administers grant programs that fund nonprofit civil legal aid organizations, including Interest on Lawyers' Trust Accounts (IOLTA) grants, the Equal Access Fund, and the Justice Gap Fund.

California Commission on Access to Justice

The California Commission on Access to Justice works to develop and support projects to improve access to civil justice for Californians living on low and moderate incomes. The commission works closely with the Judicial Council to improve access to the courts.

External Entities

Judicial Council

The Judicial Council is the constitutionally created policymaking body of the California courts, the largest court system in the nation. Under the leadership of the Chief Justice and in accordance with the California Constitution, the Council is responsible for ensuring the consistent, independent, impartial and accessible administration of justice. The State Bar appoints 4 members to the Judicial Council.

(Source: Cal. Const. Art. VI, § 6; Cal. Rule of Court 10.2)

American Bar Association House of Delegates

The House of Delegates (HOD) is the policy-making body of the American Bar Association (ABA). The State Bar's delegates are part of the California delegation, which also consists of delegates appointed by ten local bar associations, ABA sections and divisions, and former officers and ABA board members. The State Bar appoints 6 of California's 26 delegates to the ABA's HOD.

(Source: Board Resolution June 2018)

Legal Services Corporation

The Legal Services Corporation is a non-profit corporation funded through the federal appropriations process. It seeks to ensure equal access to justice under the law by distributing grants to legal aid organizations providing civil legal assistance to individuals based on federal poverty guidelines. The Board appoints representatives to serve on boards of directors of programs funded by the Legal Services Corporation, including the boards of:

- Legal Services of Northern California
- California Rural Legal Assistance
- California Indian Legal Services
- Legal Aid Foundation of Los Angeles
- Legal Aid Society of Orange County

SECTION 5. BOARD PLANNING AND FISCAL OVERSIGHT

Strategic Planning

The State Bar develops and adopts a five-year strategic plan which is updated every two years. Each year in January, the State Bar conducts a planning session to review its progress and propose other measures to enhance its mission of public protection. A progress report to the

Supreme Court, the Governor, and the Senate and Assembly Committees on Judiciary is due by February 15 each year. See Appendix J for the current Strategic Plan.

(Source: Bus. & Prof. Code § 6140.12)

Fiscal Oversight

Budget

The budget is the primary instrument of fiscal control and contains all income and expenses of the State Bar. The State Bar's strategic plan provides the framework for the annual budget formulation and process. The budget that will be presented to the Board for approval is for the following year and is prepared by the Office of Finance under the direction of the Chief Financial Officer. Each proposed budget includes the estimated revenues, expenditures, and staffing levels for all of the offices and funds administered by the State Bar. The budget correlates to State Bar legislative efforts in that it provides background information for the annual Fee Bill, which is the mechanism through which the State Bar receives the majority of its funding.

Following is a brief summary of the budget process and its relationship to the Fee Bill:

- January – Board adopts its final budget
- February – State Bar submits its final budget to the Legislature
- May – Fee Bill must pass house of origin
- September – Fee Bill must pass second house
- October – Governor must sign Fee Bill

During the year, quarterly financial reports, mid-year forecasting and budget-to-actual variance reports are required to be presented to the Board. An explanation of budgeted line item variance greater than \$100,000 of the budgeted line item shall be included in the report.

The Board may, by resolution, amend any adopted budget, upon the recommendation of the Finance and Planning Committee. All budget transfers of \$250,000 or more, all transfers between funds, and all increases of budgeted expenditures must be approved by the Board except in the case of an emergency. In an emergency they may be approved by the Executive Director after consultation with the Chair and Vice Chair.

(Source: Board Resolutions July 1981, December 1992, March 1997, June 2000, September 2004, December 2011, March 2015, March 2018.)

Revenue

The State Bar receives its revenue from mandatory fees, voluntary donations, exam fees, grants and other revenue. The majority of the State Bar's revenue comes from mandatory fees which

includes the attorney licensing fee. Examination fees include revenues from the First-Year Law Students' Examination and the California Bar Examination. Grants include revenues received by the State Bar from a variety of granting agencies and other sources. The State Bar also generates revenue through voluntary fees from licensees and donations.

Investment Policy

It is the policy of the State Bar to invest public funds in a manner which will provide the maximum security with best investment return, while meeting the daily cash flow demands of the State Bar and conforming to all laws governing the investment of public funds, and all Resolutions of the Board of Trustees.

This policy is reviewed at least annually for the purpose of recommending needed changes and modifications. The chair of the Finance and Planning Committee is responsible for initiating the review.

The State of California establishes standards for investment instruments and the State Bar utilizes these standards by diversifying its investment portfolio to minimize the risk of loss.

The Chief Financial Officer will provide quarterly reports to the Board on the status of the State Bar's investment portfolio.

Contracts

The Board must approve any contract for goods, services, or both, for an aggregate amount greater than \$50,000 or for information technology goods, services, or both, for an aggregate amount greater than \$100,000. The Executive Director may approve these contracts between Board meetings due to necessity provided that the contract is also approved by the Board Executive Committee and the Board is notified at the next regularly scheduled Board meeting.

(Source: Bus. & Prof. Code § 6008.6)

Settlement of Claims against the State Bar

The Board must approve settlements in amounts exceeding \$50,000 or in any matter which implicates a material policy issue for the State Bar, upon recommendation of the Board Executive Committee or the committee designated by the Board to review legal matters. A "material policy issue" is one with important political or operational consequences for the future of the State Bar.

(Source: Gov. Code § 900 et. seq.; Board Resolutions November 1978, October 1979, December 1995, November 2010)

Audits

The State Bar is subject to the following types of audits:

Annual Financial Audit by Independent Auditors

A financial audit is conducted by external independent auditors annually and reviews management and governance practices to ensure their compliance with all applicable standards, including those of the Governmental Accounting Standard Board (GASB) and the Financial Accounting Standards Board (FASB).

(Source: Bus. & Prof. Code § 6145)

Biannual Audit by the California State Auditor

The audit by the California State Auditor is a financial compliance and performance audit that focuses on the finances, discipline system, and other issues (varying from year to year) determined by the auditor. In addition, the audit follows up on concerns and problems highlighted from previous audits. There are no management practices that are outside of the State Auditor's purview. The State Auditor may audit any function including confidential and non-public files, and including the Office of the Chief Trial Counsel and the Office of General Counsel.

(Source: Bus. & Prof. Code § 6145)

Internal Control Review by Independent Auditors

The five-year internal control review of the State Bar's budget and fiscal policies and procedures is conducted by an independent consultant under the oversight of the Audit Committee.

(Source: Board Resolution March 2015.)

SECTION 6. LEGISLATION AND RULEMAKING

Legislation

The State Bar works closely with the Legislature to ensure that the framework governing the legal profession is consistent with the State Bar's public protection mission and the goals of the State Bar established in its Strategic Plan.

State Bar staff work with Board legislative liaisons to monitor legislative activity and advocate for the State Bar on legislative, policy and budget matters before the Legislature and Governor. The State Bar generally takes no position on bills involving substantive law. However, it may take a position on an apparent issue of substantive law if issues of procedure and substance are so inextricably intertwined that they directly affect the State Bar's core mission.

(Source: Board Resolution January 2018.)

Rulemaking

To define and carry out statutes contained in the State Bar Act, the Board may promulgate State Bar Rules and recommend to the Supreme Court enactment of Rules of Professional Conduct. State Bar Rules outline the practices of the State Bar, including those related to its governance, admissions and educational standards and programs and services. Rules of Professional Conduct establish standards of legal ethics and professional responsibility for attorneys in California and take effect upon approval by the Supreme Court. The State Bar also works with the California Supreme Court on California Rules of Court regarding the practice of law.

(Source: Bus. & Prof. Code § 6025; 6077)

SECTION 7. STAFFING

Overview

The Board has authority to hire and fire only the Executive Director, Chief Trial Counsel and General Counsel. The Executive Director has final authority to hire or fire all other staff, subject to applicable memoranda of understanding with the bargaining units that represent State Bar employees. Because of this organizational structure the Board and its members should not become involved in personnel decisions or any other matters involving any staff member other than those stated above. Concerns regarding Bar staff should be directed to the Executive Director.

Executive Director

The Executive Director is responsible for the leadership and management of the State Bar according to the strategic direction set by the Board, including:

- Playing an active role in supporting the Board
- Speaking on behalf of the State Bar in public forums
- Maintaining key external relationships
- Advancing the State Bar's Strategic Plan
- Providing appropriate direction to staff regarding internal operations and systems development
- Administering State Bar personnel matters
- Managing the financial affairs of the State Bar in an ethical and prudent fashion

An annual performance evaluation of the Executive Director will be conducted by the Executive Committee and presented to the Board for review and approval not more than 90 days after the anniversary date of the Executive Director's appointment. The Executive Committee's

evaluation will be based on a performance plan for the Executive Director to be developed in conjunction with the Office of Human Resources and provided to the Executive Director not more than 90 days after appointment. The Bar may meet in closed session to discuss the annual performance evaluation of the Executive Director.

Chief Trial Counsel

The Chief Trial Counsel is the designated legal counsel responsible for the enforcement/prosecutorial arm of the disciplinary system. The Executive Director proposes a Chief Trial Counsel to the Board for approval, and the candidate is subject to Senate confirmation. The candidate may begin to perform the duties of Chief Trial Counsel upon appointment by the Board, but if the candidate is not confirmed by the Senate within 365 days after beginning to perform those duties, the position will be deemed vacant. The Chief Trial Counsel is appointed for a term of four years and may be reappointed for additional terms. The Chief Trial Counsel serves at the pleasure of the Board.

While the Chief Trial Counsel works with the Executive Director on personnel and budget matters, the Executive Director has final authority on those matters. The Chief Trial Counsel reports to the Regulation and Discipline Committee in connection with the exercise of prosecutorial direction.

(Source: Gov. Code § 1774, Bus. & Prof. Code § 6079.5)

An annual performance evaluation of the Chief Trial Counsel will be conducted by the Regulation and Discipline Committee and Executive Committee not more than 90 days after the anniversary date of the Chief Trial Counsel's appointment. The evaluation will be based on a performance plan for the Chief Trial Counsel to be developed by the Regulation and Discipline Committee in conjunction with the Office of Human Resources and provided to the Chief Trial Counsel not more than 90 days after appointment. The Bar may meet in closed session to discuss the annual performance evaluation of the Chief Trial Counsel.

General Counsel

The Office of General Counsel is the designated legal counsel to the Bar as an entity, including the State Bar's subentities, subject to the direction of the Board and its Executive Committee or the committee designated by the Board to review legal matters.

An annual performance evaluation of the General Counsel will be conducted by the Board Executive Committee and Executive Director. The evaluation will be presented to the Board for review and approval not more than 90 days after the anniversary date of the General Counsel's appointment. The Board Executive Committee and Executive Director's evaluation will be based on a performance plan for the General Counsel to be developed in conjunction with the Office of Human Resources and provided to the General Counsel not more than 90 days after

appointment. The Board may meet in closed session to discuss the annual performance evaluation of the General Counsel.

SECTION 8. COMMUNICATION

Board Contact for State Bar Inquiries

The prevalence of social media and the media in general requires that consumers, applicants, licensees, and other stakeholders be provided with as much information as possible, in a manner that is consistent, timely, and factually accurate. Written or verbal statements made by individual members of the Board, Board committees, or subentities could easily be misconstrued to be a statement, policy or decision on behalf of the Board as a whole.

Therefore, it is important that there be one point of contact for inquiries made to the Board; that contact is the Executive Director or his or her designee.

Use of State Bar Stationery

State Bar letterhead is to be used only for official business. Only correspondence that is transmitted directly by the State Bar office may be printed or written on State Bar letterhead.

Use of State Bar E-mail

Board members must use official State Bar e-mail addresses for conducting State Bar business.

Responding to Inquiries from the Public or Media

All technical, license or disciplinary inquiries to a Board, task force, ad hoc, or subentity member from applicants, licensees or members of the public should be referred to the Executive Director or his or her designee. Also, any inquiry or contact from the media should be referred to the Executive Director or his or her designee.

Speaking Engagements and Public Outreach

Requests for Board, committee, ad hoc committee, task force, or subentity members to make presentations on behalf of the Bar should be discussed with and approved by the Chair or Executive Director. When possible discussion should include the subject matter to be presented.

SECTION 9. EXPENSE REIMBURSEMENT

Board Member Travel

Board members will be reimbursed for expenses incurred when conducting required State Bar business as provided for in the Travel and Business-Related Expense Policy for Volunteers and Contractors. See Appendix K for the State Bar's Travel and Business-Related Expense Policy. To seek reimbursement, all members must submit a completed Expense Report on the current electronic version of the Expense Report form to the Secretary of the Board, and include the required supporting documentation. A copy of the Expense Report form is available in Appendix L. Members should employ expense discipline to minimize travel expenses.

Travel Arrangements

Board members are responsible for coordinating their own travel arrangements to and from State Bar meetings and events, except for lodging when the Bar has contracted for a room block for a group meeting. The State Bar participates in the California Statewide Travel Program managed exclusively by the TravelStore, and coordinated by Meeting & Travel staff in the State Bar's Office of General Services. Board members may, if they wish, set up a TravelStore profile and make air, car rental and hotel reservations by phone or by using the TravelStore's online reservation system. TravelStore registration information is available in Appendix N. TravelStore user instructions are available in Appendix O.

Lodging for State Bar Meetings

The State Bar reserves a block of rooms for most group meetings and events. Staff will send an e-mail prior to the meeting or event to determine those members needing a room, and will advise the hotel of the attendees. Attendees of that meeting or event should stay at the contracted hotel to ensure that the minimum number of contracted rooms is met. Board members who choose not to stay at the contracted hotel will not be reimbursed for lodging expenses.

When the State Bar has not reserved a block of hotel rooms for a group meeting or event, Board members should make their own arrangements, but should check to see if government rates or other discounted rates are available. Reimbursement for lodging expenses will be made for the actual cost of a standard hotel room, up to the maximum authorized lodging rate as noted in the travel policy.

Meal Per Diems

Meal costs will be reimbursed at the authorized per diem meal rate as noted in the travel policy. The meal per diem may not be claimed when a meal is otherwise provided (e.g. a State Bar catered lunch). See Appendix L, Member Expense Report Form.

Statutory Compensation

Public members (non-attorneys) are entitled to receive \$50 per day for each day actually spent in the discharge of official duties, not to exceed \$500 per month. Members must complete and return the Public Member Request for Statutory Compensation form in order to receive this compensation. See Appendix M, Public Member Reimbursement Form.

Attorney members do not receive any compensation other than travel reimbursement and the per diem when on travel status for meals and incidentals.

(Source: Bus. & Prof. Code § 6028)

SECTION 10. BOARD MEMBER TRAINING

Board Member Orientation

A mandatory Board member orientation and training meeting will be conducted in conjunction with the September meeting. All State Bar volunteers must be provided a formal orientation which includes, among other State Bar related topics, training on implicit bias and diversity. Members unable to attend the meeting will be offered the opportunity to set up a substitute meeting to comply with this requirement and may also watch it on an archived webcast.

(Source: Bus. & Prof. Code § 6079.1; Board Resolutions May 1997, March 2002, March 2003, March 2004, July 2004, July 2008, January 2010, February 2012, January 2015, July 2015, May 2016, September 2016.)

Annual Board Member Training

As determined by the Chair, in consultation with the Executive Director, ongoing training of the Board will be given as needed throughout the year. Topics may include the Bagley-Keene Act, admissions, the disciplinary process, budget process, access to justice, labor relations, anti-trust policy, and the California Public Records Act.

SECTION 11. GUIDELINES AND PROCEDURES

Conflict of Interest

Members of the Board of Trustees must act ethically and prudently in exercising their duties, recognizing that their role is that of a fiduciary. Violations of the statutes and policies governing these duties can result in serious penalties including fines, removal from the Board of Trustees, disqualification from holding public office, or criminal sanctions.

Financial Disclosures

The rules regarding financial and personal conflicts for Board Members and the effect and applicability of such rules are governed by the Board of Trustees' "Conflict of Interest Code" as

adopted by the Supreme Court of California. Appendix P sets forth the authority for the State Bar's Conflict of Interest Policy. See Appendix P for relevant statutory authority, Board resolutions and historical notes regarding the adoption of conflict of interest guidelines. The definitions set forth in Government Code section 81000, et seq., apply to all Board members.

Board members must file disclosure statements on the Form 700 prescribed by the Fair Political Practices Commission ("FPPC") under certain circumstances as set forth in Government Code sections 87206 and 87207. Board Members shall disclose an investment, interest in real property, and income if, during a reporting period, the Board of Trustees has made a decision that materially affects the investment, interest in real property, or income.

Government Code section 87207(b)(2) provides for certain exceptions to disclosure and the applicable procedures if a Board member believes that disclosure of the name of a person who paid fees or made payments to a business entity would violate a legally recognized privilege under California law.

In addition to Conflict of Interest Code requirements, Board members are subject to the following Business and Professions Code sections regarding disclosures of financial and personal nonfinancial conflicts: Business and Professions Code sections 6035, 6036, 6037 and 6038.

Disqualification

Board members must disqualify themselves from making or influencing decisions of the Board or a committee of the Board, in which they have a financial interest or a personal nonfinancial interest which will prevent them from applying disinterested skill and undivided loyalty to the State Bar. However, when legally required in a matter, a Board member's participation is permitted even when there is a conflict.

Whether a Board member has a "financial interest" in a decision is defined by Government Code section 87103 and includes matters where it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, or on a member of his or her immediate family. In addition, section 87103 contains other enumerated "interests" involving management control or monetary investments in business entities, interest in real property, or other sources of income.

The question whether a nonfinancial interest exists is highly fact-specific. Examples include decisions affecting friends or family members of Board members. Board members should contact the Office of General Counsel if they have any questions as to whether they have an interest in any matter before the Board. See Appendix P for further references.

When Board members disqualify themselves they must immediately disclose that they have a personal or financial interest, and must refrain from participating in the matter, influencing others, and voting.

Any Board member who intentionally violates the conflict of interest disqualification rules is subject to criminal prosecution, fines, and termination from his or her position as Board member. No action or decision of the Board shall be invalid, however, if such a violation is discovered.

Conflict Rules Regarding State Bar Contracts

Strict conflict of interest rules also apply to State Bar contracts. Board members cannot be financially interested in any contract made by them in their official capacity, by the Board or by the State Bar. For conflict purposes, a contract includes, but is not limited to, purchase orders, payments for good and services, leases and grants.

If one Board Member has a “financial interest,” the State Bar cannot enter into the contract. There are, of course, exceptions to this rule.

Appendix P sets forth the legal authority governing the State Bar’s Conflicts Policy. The State Bar Incompatible Activities Policy is set forth in Appendix Q.

(Source: Gov. Code § 1090.)

Policy Restricting Business with the State Bar after Leaving Office

Members of the Board of Trustees and Senior Managers designated by the Executive Director, for a period of twelve months following expiration of their term of office or termination of employment, shall not:

Seek to do, or do, business with the State Bar for monetary gain, or Act as agent or attorney for, or otherwise represent any person, for compensation by making any formal or informal appearance, or any oral or written communication before the State Bar, or any officer or employee or agent thereof, if the appearance or communication is for the purpose of influencing official State Bar action, including the awarding or revocation of services, contracts, or the sale or purchase of goods or property.

The Board, or its designee, may waive the requirements of this policy for good cause.

(Source: Board Resolutions July 1997, May 1999.)

Participation as Amicus Curiae

The State Bar is a judicial branch state agency and should not ordinarily take a partisan position in another's lawsuit. Therefore, State Bar amicus curiae participation is extremely limited and

will be allowed only if the litigation involves issues basic to the State Bar. Examples might include validity and interpretation of the State Bar Act or State Bar rules; validity and interpretation of State Bar-sponsored legislation; or the validity and interpretation of legislation or acts of court that can seriously affect the administration of justice and attorney-client relationships. It is also recognized that the State Bar amicus curiae participation will have greater impact on the courts if used sparingly.

Any person or entity, including any component part of the State Bar, requesting State Bar participation as amicus curiae in litigation must obtain prior approval from the Board.

(Source: State Bar Rule 6.20; Board Resolutions May 1981, December 1997.)

**OPEN SESSION
AGENDA ITEM**

**November 2018
BOARD EXECUTIVE COMMITTEE ITEM III.F**

DATE: 11/15/2018

TO: **Members, Board Executive Committee**

FROM: Kimberly DaSilva, Attorney, Mission Advancement and Accountability

SUBJECT: Board Book Update

EXECUTIVE SUMMARY

This agenda item provides an update on the revision to the Board Book. The revision is intended to eliminate unnecessary and redundant information that has accumulated over the years and to ensure that the document is a resource to members of the Board, focused on the mission of the Bar, the role of the Board, meeting procedures, committee structure, and staffing.

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 operation of the Board and its oversight of the Bar. Over time it grew into an excessively long and poorly structured document ill-suited to assist Trustees in understanding the mission of the Bar or their role in advancing that mission.

In June of this year the Bar contracted with Cindi Christenson, a retired public sector executive who has drafted several board manuals, to extensively revise the Board Book, making it consistent in format and style, succinct in presentation, and relevant to the needs of Trustees. Working with Bar staff, Ms. Christenson established guidelines to determine what material should be retained in the Board Book; condensed; updated; moved to another document where the material will be more useful; or, removed altogether. Those guidelines, along with representative examples, were shared with the Board in an update during its September meeting.

DISCUSSION

The existing Board Book is 273 pages long, broken into five sections based on content. Each section is further broken into multiple “tabs”, which then contain “articles” and, sometimes even additional “sections.” However, the “tabs” were not created based on the content or structure of the overall Board Book. Rather, when the Bar sought to place the document online, to increase transparency, they were created as an administrative tool, for ease of updating the document on the website when necessary to accommodate changes to the Board Book. This is merely one example of the way in which the Board Book has changed over time without consideration for ease of navigation, much less relevance for assisting Trustees in fulfilling their duties.

The revised Board Book, approximately 25 pages in length with approximately 50 additional pages of focused appendices, is an attempt to transform the current Board Book into an informative yet accessible resource for Board members. In doing so, the revision retains many of the current sections, but condenses, updates and deletes, where appropriate. It remains organized in sections but dispenses with any further scaffolding such as “tabs”, which were never intended for the actual reader.

Below is a description of each section, as well as a description of how it differs from the current Board Book. The revised Board Book is organized into 11 sections and includes a list of appendices. The appendices are intended to provide more detailed information as a reference, where the detail is needed, allowing the body of the book to serve as a succinct guide to Trustees. The appendices are also intended to set the foundation for more straightforward updating, on a regular basis, of information that changes from year to year.

Section 1 State Bar of California

Section 1 is condensed from 34 pages in the current Board Book to one half page in the revision by: moving the staffing and strategic planning sections; deleting numerous recitations of statutes from the Business and Professions Code; and consolidating governing authority into bullet points.

Section 2 Board of Trustees

Section 2 is condensed from 57 pages in the current Board Book to approximately six pages in the revision by: deleting a significant amount of historical information; deleting recitations of statutes from the Business and Professions Code; consolidating and refocusing communications policy to emphasize the need for a single media contact; deleting material not relevant to the State Bar’s purpose; summarizing information concerning Board composition, terms, officer selection, resignations, rules of conduct, Board and Board member responsibilities and the duties of the Chair and Vice-Chair. Section 2 also provides summary descriptions of the standing committees, while referring readers to an appendix for detailed information on committee charters.

Section 3 Meeting Procedures

Section 3 is condensed from 27 pages in the current Board Book to approximately four pages in the revision by: consolidating information such as claims against the Bar, amicus participation and public comment; and, moving both the Bar's legislative guidelines adopted earlier this year and the conflict of interest section. Section 3 includes material on: compliance with the Bagley-Keene Open Meeting Act; meeting frequency; location; attendance; quorum; agenda items; notice; closed sessions; meeting records; voting; recording and webcasts; public attendance; public comment; and, types of meetings.

Section 4 Subentities, Task Forces, Committees of the Supreme Court and External Entities

Section 4 has been removed for the time being, pending the finalization of the implementation of Board resolutions regarding State Bar subentities. A separate agenda item being heard by the full Board of Trustees will address the implementation plans following from the Appendix I subentity review directed by the Governance in the Public Interest Task Force. These implementation plans address issues such as the terms of members of subentities, the process for appointing members and officers of subentities, the size of subentities, and other issues that need to be finalized before this section can be completed.

Section 5 Board Planning and Fiscal Oversight

Section 5 is condensed from 30 pages in the current Board Book to approximately three pages in the revision by: consolidating material and moving some to an internal financial policies and procedures document; deleting material that is specific to various funds; and, deleting historical material. Section 5 includes information on: strategic planning; the State Bar budget, including a brief summary of the budget process; revenue sources; audits; contracts that must be approved by the Board; and, settlement of claims against the State Bar.

Section 6 Legislation and Rulemaking

Section 6 is absent from the current Board Book. The former legislative policy was removed by the Board in January of this year when the Board adopted its new "Legislative Program Purpose and Guiding Principles" and, simultaneously eliminated the old "Legislative Policies and Procedures" section (Tab 3.5 of Section 3), pending the Board Book revision, to more properly align the section with those guiding principles. Where the current Board Book incorporates legislation into a shared section with other legal policies and procedures, the revision carves out an entire section specifically addressing Legislation and Rulemaking. Section 6 includes a description of the purpose of the Bar's legislative program as well as the Board's authority to promulgate rules and regulations to implement the State Bar Act.

Section 7 Staffing

Elements of Section 7 are contained in the current Board Book under strategic planning and the State Bar's governing authority. In the proposed, revised Board Book, Section 7 exclusively addresses staffing. Specifically, section 7 includes descriptions of the authority of the Executive Director, the General Counsel, and the Chief Trial Counsel, the Board's relationships with each of these executives, and the process for evaluating, appointing, and removing each of those positions.

Section 8 Communication

The current Board Book includes communication in a section with legal and legislative policies. In the proposed, revised Board Book, Section 8 the communication material has been updated to address social media and to emphasizes the importance of the Executive Director, or her designee, as the single point of contact for inquiries made to the Board. It also requires that all requests for a Board, committee, task force or sub-entity member to make a presentation be submitted to and approved by the Board Chair or the Executive Director.

Section 9 Expense Reimbursement

Section 9 in the proposed, revised Board Book, addresses expense reimbursement. The current Board Book includes this topic in the overarching section on Finance. The new Section 9 includes Board member travel, lodging, reimbursement and statutory compensation for public members. This section also refers readers to an appendix containing the State Bar's detailed Travel and Business Related Expense Policy.

Section 10 Board Member Training

The revision adds a new section, Section 10, dedicated to Board member training, making it clear that all Board members and sub-entity volunteers are required to attend a formal orientation which includes, among other State Bar related topics, training on implicit bias and diversity. Section 10 also describes trainings that occur throughout the year on various topics such as the Bagley-Keene Act, admissions, the disciplinary process and the budget.

Section 11 Guidelines and Procedures

In the revision Section 11 carves out an entire section specifically addressing the State Bar's Conflict of Interest policy, explaining rules regarding: financial disclosures; disqualification from making decisions; conflict rules regarding State Bar contracts; and, the policy restricting Board members from doing business with the State Bar for a period of twelve months after the expiration of his or her term.

Appendices

Because the revision is significantly more summary than the current Board Book, the revised Board Book contains a host of helpful appendices, which provide detailed information on topics relevant to Board members. This is intended to ensure that Board members can still access specific information they need to perform their duties effectively. The appendices include: a list of current Board members; Standing Committee Charters; a list of Ad Hoc Committees with charters; a Board Committee Structure Matrix; a list of Board liaisons; Sub-Entity charters; the current Strategic Plan; the current Travel and Business Related Expense Policy; authority underlying the Conflict of Interest policy; a Glossary of Common State Bar Acronyms; a Cheat Sheet for Chairing a Meeting in Lieu of a Script; and, a calendar of annual Board events.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

Revision of entire Board Book.

STRATEGIC PLAN GOALS & OBJECTIVES

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

Objective: Improve transparency of the activities of the State Bar and its Board of Trustees.

RECOMMENDATION

None. Informational item only.

ATTACHMENT(S) LIST

- A. Revised Board Book, including Appendices**
- B. Current Board Book**

Proposed State Bar E-mail Policy

The revised Board Book adds a section requiring that State Bar Board members use official State Bar e-mail addresses when conducting State Bar business. This e-mail policy is designed to ensure that the information created, transmitted, and received by Board members is stored on the State Bar's e-mail server. This will enable Board members and the State Bar to easily search for records responsive to California Public Record Act ("CPRA") requests without having to search through personal or work related e-mails. It will also ensure that State Bar information is securely and confidentially maintained.

Last year, the California Supreme Court in *The City of San Jose v. Superior Court (Smith)* (2017) 2 Cal.5th 608 ("*San Jose*") clarified that a record is subject to the CPRA if it was created or retained by an individual on behalf of the State agency relating to the conduct of that agency. If it meets this definition, it is a public record, regardless of where the record is located or what e-mail address was used to create or receive the record. *Id.*, at 614 ("When a city employee uses a personal account to communicate about the conduct of public business, the writings may be subject to disclosure under the California Public Records Act."). Accordingly, any communication, document or other record retained on a State Bar official or employee's personal account may be disclosable under the CPRA if it relates to State Bar business.

To avoid searching through private and/or work related e-mail accounts to locate documents responsive to CPRA requests, and to ensure that State Bar records are properly maintained and easily accessible, staff recommends that Board members be required to use official State Bar e-mail addresses to conduct State Bar business. This policy will also ensure that State Bar records are not inadvertently disclosed to third parties. For instance, if a Board member uses a law firm e-mail address to conduct State Bar business, employees of the law firm may have access to State Bar records, and they will also be stored on the law firm's server. Such disclosures may constitute a waiver of, *inter alia*, CPRA exemptions from public disclosure and/or the attorney client privilege.

This policy is consistent with other State boards and commissions. The boards for the following state entities all have official state e-mail address: City and County of San Francisco, County of Alameda, County of Los Angeles, County of Orange, County of Santa Clara, County of Sonoma, County of Contra Costa, County of El Dorado, County of San Luis Obispo, County of San Joaquin, County of San Mateo, County of Fresno, County of Santa Barbara, County of San Diego, and County of Humboldt. Additionally, County of Santa Clara has an official e-mail policy available on their website that states "[a]ccess to e-mail is provided to employees and occasionally to other persons such as authorized contractors or volunteers...". Board Policy No. 3.36, *available at* <https://www.sccgov.org/sites/scc/gov/CountyPolicies/Board-Policy-3.36-E-mail-Policy.pdf>¹.

For these reasons, staff proposes adding the following language to the Revised Board Book: "Board members must use official State Bar e-mail addresses for conducting State Bar business."

¹ Certain California counties, as well as the California Judicial Counsel, California Franchise Tax Board, and California Board of Equalization either do not have official e-mail policies, or State Bar staff was not provided access to them, despite efforts to contact these entities.