



The State Bar of California

OPEN SESSION

AGENDA ITEM

112 JANUARY 2021

BOARD EXECUTIVE COMMITTEE III.A

DATE: January 21, 2021

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

FROM: Dag MacLeod, Chief, Mission Advancement & Accountability Division

SUBJECT: Approval of 2021 Legislative Priorities

EXECUTIVE SUMMARY

The priorities identified for the 2021 Legislative Session focus on providing the Office of Chief Trial Counsel with greater access to records that it needs to investigate attorney misconduct, improving the State Bar's efforts to collect debt, and clarifying rules regarding the termination of attorneys' status as involuntary inactive following a period of incarceration. In addition to listing the proposed 2021 legislative priorities for the Board's approval, this agenda item also includes two priorities from previous Board-approved priorities that were not taken up by the State Legislature. While State Bar staff are uncertain of the likelihood that the previously approved priorities will be taken up in the current session of the Legislature, they are shown here to retain them as priorities and pursue if the opportunity presents itself during the current session of the Legislature.

BACKGROUND

In 2018 the Board adopted a new legislative program that articulated the program's purpose along with a set of guiding principles. The purpose of the State Bar's legislative program is to monitor legislative activity and represent and advocate for the State Bar on legislative, policy, and budgetary matters before the Legislature and the Governor. The State Bar seeks to ensure that laws are in place that enhances the ethical and competent practice of law, the ability to effectively license and regulate lawyers, and provide fair, just, and appropriate discipline of

attorneys. The State Bar also seeks to ensure that laws promote access to the profession and the justice system.

This agenda item sets forth the State Bar’s legislative priorities for 2021. It requests approval from the Board of Trustees for the proposals and approval to pursue previously identified proposals if the opportunity presents itself in the State Legislature’s current session.

DISCUSSION

Table 1, immediately below, provides a summary of the proposed legislative priorities for 2021.

Table 1

Code Section (Business and Professions Code unless otherwise specified – “New” indicates a proposal that would require a new code section)	Purpose and Background of the Proposal
6007(c)(7)	<p>Purpose: To clarify the legislative intent regarding reinstatement of attorneys who have been enrolled as involuntarily inactive.</p> <p>Background: Section 6007(c)(5) requires the State Bar Court to order the involuntary inactive enrollment of an attorney who is sentenced to incarceration for 90 days or more as a result of a criminal conviction for at least the period of time in which the attorney is incarcerated. Section 6007(c)(7) requires the State Bar Court to terminate involuntary inactive enrollment upon proof that the attorney’s conduct no longer poses a substantial threat of harm to the interests of the attorney’s clients or the public. As written, section 6007(c)(7) does not appear to be applicable to those enrolled inactive pursuant to section 6007(c)(5).</p> <p>Amendments to this section would add language to clarify that the State Bar Court should terminate inactive enrollment upon proof that the respondent is no longer incarcerated.</p>
6034	<p>Purpose: To improve the State Bar’s debt collection</p> <p>Background: Section 6034 provides that the State Bar may collect “any unpaid amount owed to the State Bar of California, including any fine, penalty, assessment, cost, or reimbursement imposed under sections 6806.10, 6140.5(c), and any other applicable law” through the Franchise Tax Board’s Interagency Intercept Collection (FTB’s IIC) program and that these funds are reserved for legal services.</p> <p>Proposed amendments to this section would codify that any unpaid amounts</p>

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	<p>owed pursuant to Section 6086.13 (monetary sanctions) can be collected through FTB’s IIC program. Moreover, amendments would clarify that all funds except those collected pursuant to Section 6086.13 (monetary sanctions) are reserved for legal services because any funds collected pursuant to Section 6086.13 (monetary sanctions) have been reserved for the client security fund.</p>
6140.5	<p>Purpose: To require active attorneys and attorneys who are on probation to reimburse the Client Security Fund.</p> <p>Background: Section 6140.5 provides that attorneys who caused the Client Security Fund (CSF) to issue a payment of funds to a claimant (payout) shall reimburse CSF for the amount of the payout.</p> <p>Currently, subdivision (d) specifies only two categories of attorneys to which this statute applies: “publicly reprovred or suspended” licensees, thus limiting the State Bar’s ability to collect reimbursement from attorneys who are active or are on probation.</p> <p>Proposed amendments to this section would clarify subdivisions (d) and (e), broadening the scope of licensees subject to this section and adding new authority to subdivision (f) for the CSF Commission to alter the non-court-ordered restitution amount as set forth below.</p> <p>For subdivision (d) either remove the qualifier “publicly reprovred or suspended” licensee, or add other categories of licensees—such as “active” or on “probation”—whose CSF reimbursement obligations will also be added to their annual licensing fee.</p> <p>For subdivision (d) and (e) clarify that these subdivisions are subject to subdivision (c) so the State Bar’s right to collect the payout amount is independent of a licensee’s obligation not to have any outstanding CSF debt if they wish to continue to practice or seek reinstatement.</p> <p>For subdivision (f) provide new authority for the CSF Commission to alter the restitution amount based on the debtor’s financial hardship status or other good cause where that restitution amount is not part of a court order.</p>
6054.1 (New)	<p>Purpose: To provide the State Bar access to law enforcement records necessary for the investigation of attorney misconduct.</p>

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	<p>Background:</p> <p>District attorneys, city attorneys, and other prosecuting agencies are required under Section 6101(b) to notify the State Bar of the pendency of any action in which an attorney has been charged with a felony or misdemeanor and that such notice shall describe the crimes charged and the alleged facts.</p> <p>Section 6054 provides that state and local law enforcement agencies shall cooperate with and give “reasonable assistance and information, including the providing of state summary criminal history information and local summary criminal history information,” to the State Bar of California.</p> <p>Section 6054 does not, however explicitly require or authorize law enforcement to provide the State Bar with police reports, toxicology and other test results, video recordings, photographs, witness contact information, preliminary hearing transcripts, etc. Prosecuting agencies routinely cite the confidentiality and lack of authority to release requested information when denying State Bar requests, thereby hampering prosecution of attorneys in State Bar Court.</p> <p>A proposed amendment would add section 6054.1, which would direct prosecuting agencies to provide requested information and evidence to the State Bar.</p>
Vehicle Code section 1808.51(d) (New)	<p>Purpose: To provide the State Bar access to DMV records similar to the access currently afforded to other government agencies.</p> <p>Background:</p> <p>Vehicle Code section 1808.51 specifies that the Bureau of Real Estate, City Attorneys, and the Bureau of Automotive Repair may obtain copies of photos directly from the Department of Motor Vehicles (DMV). Access to DMV photos are valuable in the investigation of both attorney and nonattorney unauthorized practice of law cases, to help identify the responsible party.</p> <p>The proposed amendment to this section would add language to allow the State Bar to obtain copies of these photos.</p>
Public Utilities Code section 2891(d)(12)	<p>Purpose: To clarify that telephone companies may share information with the State Bar in a manner similar to information shared with law</p>

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(New)	<p>enforcement.</p> <p>Background: Public Utilities Code section 2891 prohibits telephone companies from sharing information, including records of telephone calls and text messages, without consumer consent. Section 2891(d) enumerates exceptions to this prohibition, including information provided to a law enforcement agency in response to a lawful process. Telephone companies have objected to subpoenas from the State Bar for such records, which are often vital to investigation of cases.</p> <p>The proposed amendment to this section would add language providing that information could be shared with the State Bar in response to a lawful subpoena.</p>
6213(d)	<p>Purpose: To provide greater flexibility to legal aid providers to use IOLTA funding for needy clients whose income falls between 125 and 200 percent of the Federal Poverty Line.</p> <p>Background: The State Bar allocates funds each year to legal services programs from the interest collected on client trust accounts (Interest on Lawyers’ Trust Accounts (IOLTA) program). To receive IOLTA funds, legal services programs must have as their primary purpose, providing legal services to indigent persons without charge. Only services provided consistent with these purposes may be funded by the IOLTA program grants. Section 6213(d) generally defines an “indigent person” as a person whose income is 125 percent or less of the federal poverty level (FPL). As a result, many programs are forced either to limit client eligibility only to those who meet this definition of indigent—and thus, turn away needy, low-income clients whose income is above the 125 percent threshold—or to segregate expenses so IOLTA funds are not used for work supporting “nonindigent” clients.</p> <p>In partnership with legal services organizations currently funded under the IOLTA program, the State Bar would seek amendments to this section to raise the client eligibility threshold from 125 percent or less of FPL to 200 percent or less of FPL. IOLTA funded organizations are seeking this change to provide greater flexibility. Increasing the threshold to 200 percent of the FPL would expand the range of low-income clients eligible to be served with IOLTA funds by over 5 million, from approximately 7.3 million to approximately 12.4 million people statewide.</p>

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	Given the challenges presented by COVID-19 and specifically the economic hardship many individuals and families are experiencing from sudden and prolonged unemployment and high healthcare costs, this statutory change will expand the pool of individuals who can seek free civil legal services.

Table 2, below, shows three legislative priorities from previous years that were not taken up by the Legislature. Staff have chosen not to include these as part of the 2021 priorities because of uncertainty about whether the Legislature would act on them in 2021. State Bar staff present them here, however, and propose that they be retained and pursued in the current legislative session or in the future if the opportunity presents itself.

Table 2

Code Section (Business and Professions Code unless otherwise specified)	Purpose of the Proposal
6001.2	<p>Purpose: To eliminate a legislative mandate that is no longer necessary.</p> <p>Background: This section requires the State Bar to form a Governance in the Public Interest Task Force and submit a report to the Legislature every three years. Reports and recommendations from the task force have led to systemic reforms, resulting in a State Bar whose mission, strategic plan, and goals and objectives are focused entirely on public protection. As such, the statutory mandate of the task force is now unnecessary.</p> <p>The proposed amendment to this section would sunset the task force.</p>
6230-6238	<p>Purpose: To separate the voluntary component of the Lawyer Assistance Program from the State Bar so that it can attract more clients.</p> <p>Background: Section 6231 requires the State Bar to establish and administer an Attorney Diversion and Assistance Program, known as the Lawyer Assistance Program (LAP) to assist attorneys who suffer from substance use disorders or mental illness. This program includes both a voluntary component for attorneys seeking support and a mandatory, disciplinary component for attorneys whose</p>

Code Section (Business and Professions Code unless otherwise specified)	Purpose of the Proposal
	<p>misconduct is shown to be related to their substance use or mental illness.</p> <p>The rate of participation in the voluntary component of LAP is very low, which is a cause of concern in light of research showing relatively high rates of substance abuse among attorneys. In addition, surveys of licensees have shown a reluctance to participate in a program housed within the regulatory agency that oversees attorney discipline and licensing.</p> <p>Proposed amendments to these sections would transfer the voluntary component of the LAP to the California Lawyers Association, which is better positioned to encourage voluntary participation by those needing such assistance.</p>
6060.25	<p>Purpose: To protect the confidentiality of data submitted by law students and clarify the conditions under which information on applicants' moral character proceedings would be eligible for disclosure.</p> <p>Background: Section 6060.25 provides that any identifying or potentially identifying information submitted by an applicant to the State Bar for admission and a license to practice law shall be confidential and shall not be disclosed pursuant to any State law, including but not limited to the California Public Records Act.</p> <p>Amendments to this section would (1) add that identifying or potentially identifying information <i>submitted by a law student or by a law school to the State Bar for regulatory purposes</i> shall be confidential and shall not be disclosed pursuant to any State law, including but not limited to the California Public Records Act; and (2) add a subdivision consistent with section 6060.2(b) (regarding the confidentiality of moral character proceedings) providing that, notwithstanding the prohibition on disclosure of identifying or potentially identifying applicant or law student records, such records may be disclosed in response to a lawfully issued subpoena or a written request from a government agency responsible for either the enforcement of civil or criminal laws or the professional licensing of individuals that is conducting an investigation about the applicant.</p>

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES OF THE STATE BAR

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - core business operations

RECOMMENDATIONS

Should the Board Executive Committee concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board Executive Committee recommends that the Board of Trustees approve the State Bar's 2021 legislative priorities and the priorities from previous years shown in Tables 1 and 2.

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees, upon recommendation of the Board Executive Committee approve the State Bar's 2021 Legislative Priorities and the priorities from previous years shown in Tables 1 and 2.

ATTACHMENT(S) LIST

None