



The State Bar *of California*

OPEN SESSION AGENDA ITEM 41-1 JANUARY 2021

DATE: January 22, 2021

TO: Members, Board of Trustees

FROM: Donna S. Hershkowitz, Interim Executive Director

SUBJECT: Report from Executive Director

The annual January meeting of the Board of Trustees provides an important opportunity to review the State Bar's progress in implementing the objectives designed to move us closer to meeting the ambitious and important goals set forth in the Strategic Plan.

Each year, the planning session highlights select goals from the 2017–2022 Strategic Plan for an in-depth analysis of what the State Bar is and could be doing to advance those goals. This year, the January 21 planning session brings focused attention on two of our Strategic Plan goals:

- Goal 2 – Ensure a timely, fair, and appropriately resourced . . . discipline and regulatory system for the more than 250,000 lawyers licensed in California; and
- Goal 4 – Support access to legal services for low- and moderate-income Californians and promote policies and programs to eliminate bias and promote an inclusive environment in the legal system and for the public it serves. . .

With the exception of the date, the language above is lifted verbatim from my January 2020 report to the Board, but it holds equally true today. The 2021 planning session is designed to update the Board on key discussions and decisions occurring in the Paraprofessional Program Working Group in its efforts to carry out objective f of goal 4 (“explore options to increase access through licensing of paraprofessionals, limited license legal technicians, and other paraprofessionals”) and seek the Board's feedback and direction. The working group and its several subcommittees meet frequently to debate the proper licensing, regulatory, and disciplinary scheme for paraprofessionals. It has spent considerable effort seeking to identify the legal subjects that may be most appropriate for paraprofessional assistance. And it is currently designing a pilot project as a way to launch this new program. Often the Board is presented with recommendations solely at the end of an important effort such as this one. That is a tradition worth parting with, however. The presentation by Justice Ioana Petrou, Chair of

the working group, is an opportunity for the full Board to provide input while the discussions are ongoing, to ensure that the end product of this extraordinarily busy working group is informed by the intentions and goals of the Board. It will provide early insight into the final recommendations and give the Board the opportunity to form their impressions and goals for the desired outcomes of this important work.

The planning session also includes a presentation on the attorney discipline system. While not tied to one specific objective of Goal 2, it relates to several:

- Objective b: related to the health and efficacy of the discipline system and measures to improve its fairness and efficacy
- Objectives e and f: related to developing an attorney self-assessment model and a preventative education approach
- Objective g: seeking to get information about firm size and practice type for the purpose of informing attorneys about resources available to them and better understanding the risks of complaints based on practice type

The presentation is intended to continue the discussion about what has been done and what more can and should be done to create a fair and effective attorney discipline system, free of implicit bias or disproportionate outcomes. The presentation builds on prior discussions of risk-based regulation and seeks to set the stage for the work of the newly formed Ad Hoc Commission on the Discipline System (to which members will be named at this Board meeting). This part of the planning session presents an opportunity for the Board to set forth its intentions, begin the debate on critical issues, and inform the upcoming work of the Ad Hoc Commission.

In September 2020, I provided the Board with an update on the status of our efforts to complete the many important objectives outlined in the 2017–2022 Strategic Plan, so I will not repeat it at this time. But I will note that the Board has embarked on an ambitious agenda for 2021 and the coming years, with the work of both the groups mentioned above, the Closing the Justice Gap Working Group, the Blue Ribbon Commission on the Future of the Bar Exam, and the important array of work being done by the State Bar's standing committees. In addition, the State Bar continues to address the challenging environment brought about as a result of the COVID-19 pandemic and the changes that has necessitated, such as the delivery of a remote bar exam and the creation of the new Provisional Licensure Program. At the same time, we continue to study and implement programmatic approaches to increasing access to justice.

One project I am excited about, but which has gotten little attention so far, is the planned work with the California Commission on Access to Justice pursuant to the Board-approved contract. In 2020, the commission provided the State Bar a Justice Map, an online tool capable of identifying the types of legal services available for low- and moderate-income California residents throughout the state. During 2021, the commission will further develop the Justice Map and its utility, by, among other things, developing a set of recommendations for the basic/core legal services that should be available in California communities for low-income or modest means residents, and using the map to identify where those services are currently

unavailable. The next step will be strategizing how progress may be made in making core legal services available.

And that is just a summary of some of the work on which we will be embarking.

In addition to the planning session, the Board and its committees have a full slate of important items for consideration and action during this meeting. Board and committee agendas include adoption of the 2021 budget, and an important discussion of whether an amendment to the Rules of Professional Conduct is appropriate to prevent conflicts of interest when elected district attorneys receive political or financial support from law enforcement unions and then are tasked to investigate and prosecute officers for misconduct. The Board will consider legislative priorities for 2021, proposed rule changes, and a revision of some of the metrics used to evaluate the work of the State Bar in effectively carrying out its mission.

Once again, in identifying the work we have been doing and the work that is to come, I have had the opportunity to think about the vast amount of work performed by the Board and staff throughout the year. The work highlighted above is representative of our continuous efforts in furtherance of the State Bar's mission: to regulate the legal profession, to expand access to justice and diversity and inclusion in the legal profession, and to discipline attorneys in furtherance of public protection.