



The State Bar of California

OPEN SESSION AGENDA ITEM 41-1 MAY 2021

DATE: May 13, 2021

TO: Members, Board of Trustees

FROM: Donna S. Hershkowitz, Interim Executive Director

SUBJECT: Report from Executive Director

The amount of activity since the last regularly scheduled meeting of the Board of Trustees belies the fact that only eight weeks separated that meeting from this one. The full Board convened for four specially set meetings during those eight weeks, and Board committees, including the search committees for the Executive Director and Chief Trial Counsel, met seven times over the course of those eight weeks. Among other things of note, since the last meeting: the State Bar released its [Annual Discipline Report](#) (ADR); the California State Auditor released its [biennial performance audit](#) of the State Bar, Board and State Bar leadership have been in discussions with legislators and key legislative staff in the lead up to the fee bill ([Senate Bill 211](#)) hearing in the Senate Judiciary Committee, the results of the [February 2021 California Bar Exam](#) were released, and the first meeting of the Ad Hoc Commission on the Discipline System was held. These activities have left me thinking a lot about the State Bar's emphasis over the past few years on continuous improvement, and the Board's willingness to explore and delve into important issues even when—or maybe especially when—the outcome may point to flaws in our current systems and processes.

A quick search of the Internet reveals numerous images of a continuous improvement cycle and articles identifying the steps of a continuous improvement process (generally four, five, or six depending on the article or the graphic). But collapsed to its most basic form, a continuous improvement cycle may look like this:



Continuous improvement at the State Bar has been driven by a reform-minded Board or similarly inclined Bar leadership aiming to ensure use of best practices and that the most current thinking is brought to bear on the State Bar’s public protection efforts and access and inclusion objectives. Examples of these efforts include the formation of the Ad Hoc Commission on the Discipline System, study of disparities in the discipline system and disparate performance on bar exam questions by race or gender, and formation of the Closing the Justice Gap Working Group and the Paraprofessional Program Working Group. Other efforts toward continuous improvement have been driven by more pedestrian pursuits—namely, the discovery of processes that are internally inconsistent, inconsistent with rules, or, like the fingerprinting initiative, inconsistent with state law. The agenda for this Board meeting includes items that fall into both of these categories. Regardless of the impetus, however, our mission cannot be effectively served without a constant evaluation of what we are doing and whether that is the most fair and effective way to meet our goals.

One tool the State Bar has been seeking to adopt to assist with the more prosaic efforts for continuous improvement has been a comprehensive compliance review process that would encompass the ongoing review of governing laws and rules and their implementation. While efforts have been launched in the recent past, they were not broad enough to meet the needs of an organization as complex and multifaceted as the State Bar. The process, if properly conceived, will enable us to determine not just whether issues of compliance might exist, but could also be the jumping-off point for additional forward-leaning reforms to help ensure the State Bar is putting its public protection mission at the heart of all that it does—consistently seeking to improve its fairness, effectiveness, accountability, and transparency. Developing an effective process will be challenging, but we are certain that we can find a number of models the State Bar can adopt or adapt that will get the process moving in the right direction.

I am hopeful that we will have at least the broad strokes of such a process identified in short order, which will be shared with the Audit Committee and can be detailed in a subsequent Executive Director report to the Board.