



The State Bar of California

OPEN SESSION AGENDA ITEM SEPTEMBER 2023 BOARD EXECUTIVE COMMITTEE III.A

DATE: September 21, 2023

TO: Members, Board Executive Committee

FROM: Louisa Ayrapetyan, Board Secretary, Office of the Executive Director

SUBJECT: Discussion Regarding Sunset Review of State Bar Subentities

EXECUTIVE SUMMARY

In accordance with [Section 4.8 of the Board Policy Manual](#), the Board Executive Committee is mandated to carry out a sunset review of nonstatutorily created State Bar subentities every five years, starting in 2023. This agenda item introduces a review procedure proposed by staff.

BACKGROUND

Governance in the Public Interest Task Force (GIPITF)

The State Bar of California's [2017 Governance in the Public Interest Task Force Report](#) focused on three main themes:

1. Defining the State Bar's Public Protection Mission: The task force proposed a mission statement emphasizing the protection of the public, licensing, regulation, and discipline of attorneys, and promoting access and inclusion in the legal system.
2. Board Composition and Governance: Recommendations were made regarding the composition and governance of the Board, including optimal Board size.
3. Board Committee and Subentity Structure and Effectiveness: The task force suggested a thorough evaluation of each subentity, restructuring of Board committees, and alignment of subentities and Board committees for better oversight.

[Appendix I of the report](#) comprised a review of State Bar subentities in relation to the proposed mission statement. The aim was to assess whether the structure of the State Bar's subentities aligned with their assigned tasks and if appropriate oversight mechanisms were in place. Board resolutions flowing from Appendix I recommendations eliminated many subentities, and created new rules for remaining subentities regarding volunteer appointments, term limits, the

selection of officers, and subentity size. In addition, the recommendations included that a sunset review of nonstatutory subentities occur every five years. The sunset review recommendation was adopted by the Board in [November 2018](#) and incorporated into the Board Policy Manual accordingly.

DISCUSSION

The following subentities are subject to sunset review:

1. California Board of Legal Specialization
2. Client Security Fund Commission
3. Committee of State Bar Accredited and Registered Schools
4. Committee on Professional Responsibility and Conduct
5. Council on Access and Fairness
6. Law School Council
7. Lawyer Assistance Program Oversight Committee
8. Review Committee for Commission on Judicial Nominees Evaluation

An excerpt of the Appendix I narrative for each of these subentities is provided as Attachment A.

Proposed Sunset Review Process

The 2017 Governance in the Public Interest Task Force subentity review was premised on a number of questions related to each of the individual subentities:

1. What is the legal foundation for the subentity?
2. What is the role of the subentity?
3. How does the subentity ensure accountability and transparency?
4. How does the Board exercise oversight of the subentity?
5. What is the subentity's organizational structure?
6. What is the division of labor between the subentity and State Bar staff?
7. How does the subentity compare to like entities in other states or other sectors?

Staff proposes that the 2023 subentity review process incorporate these same questions.

In addition, the Board's conceptual framework for the review process, articulated at its [September 2018](#) meeting, should be addressed as part of the review process.

Key elements include:

- 1. Role Definition:** The purpose and objectives of regulation are clear to the regulator, the regulated, and the public.
- 2. Accountability and Transparency:** The process and outcome of the work of the regulator is reported to the public and governmental partners on a timely basis and consistently. Reports include meaningful outcome measures to evaluate the effectiveness of the regulator's work.
- 3. Clear Lines of Authority:** For each function performed by the regulator, a shared

understanding about who makes decisions and how it must exist within the regulatory agency itself as well as among the regulatory agency, those regulated, and the regulatory agency's partners in government.

4. **Impartial, Consistent, and Fair Decision-Making:** The policies and decision-making rules of the regulatory agency are explicit and transparent. Those who make decisions are protected from undue influence from bureaucratic, political, or fiscal pressures.
5. **Engagement:** Those who are regulated, along with members of the public, are consistently aware of and active in improving current and future operations and outcomes of the regulator's work in a process free of conflicts of interest.
6. **Size:** The size of the regulatory agency and its subentities is based on purpose. Decision-making bodies are optimized at seven members; policy advisory bodies may need to be larger to incorporate perspectives necessary to the work at hand.

This agenda item does not seek action from the committee related to the sunset review since there are no specific metric-driven methods available to evaluate the committees. Instead, staff is asking the committee for feedback regarding the proposal to base the review process on the 2017 GIPITF subentity review questions and the 2018 review framework elements, and to identify other evaluation metrics as appropriate. The chair of the Board of Trustees has been asked to designate two Board members to work with staff to finalize the review process and to support implementation of the review itself in the coming months.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

Goal 4. Protect the Public by Engaging Partners

- d. 1. Collaborate with the legislature and other stakeholders to increase public protection and support the State Bar's mission.

RECOMMENDATIONS

None

ATTACHMENT LIST

- A. Appendix I: State Bar Subentities Narratives

Section 4, Subentities of the State Bar

Subentities consist of State Bar volunteers that support and advise the Board. The Board and the State Bar often work to fulfill their public protection mission through subentities—including committees, commissions, task forces, and other advisory bodies—to improve the operational management of the State Bar. Subentities are limited to seven volunteers unless a specific exception applies or unless a justification is established for a larger size based on workload or need for representation.

BACKGROUND AND KEY ISSUES IDENTIFIED IN APPENDIX I

California Board of Legal Specialization (CBLS)

Source of Authority

California Rule of Court 9.35, requires the State Bar to establish and administer a program for certifying legal specialists, and additionally allows the State Bar to provide certification through the CBLS “or any other entity approved by the State Bar to designate specialists.”¹

Board Oversight

The Board of Trustees oversees the work of the CBLS in several ways. The Board appoints CBLS members, approves CBLS standards and rules, and approves areas of specialization and the use of specific private certification providers upon recommendation by the CBLS.

Key Issues

The task force considered whether the legal specialization certification program serves as a public protection function, or primarily is a benefit to attorneys in the development of their law practices. No conclusive determination was made, but various alternative models for performance of the legal specialization certification program were discussed:

1. Reposition the function outside the State Bar in a separate independent entity.
2. Retain the regulatory function of reviewing the legal specialization certification process and certifying the entities that certify legal specialists within the State Bar.
3. Reposition the legal specialization function in-house to be performed by State Bar staff with the assistance of consultants, eliminating the need for CBLS.

Given that this program area was created by Supreme Court Rule, the Court’s views on these three areas of concern should be obtained as a first step.

¹ [Rule 9.35 of the California Rules of Court.](#)

Client Security Fund Commission (CSFC)

Source of Authority

The Client Security Fund (CSF) was established by the enactment of Business and Professions Code section 6140.5(a). Business and Professions Code section 6140.5(a) provides that the CSF will be subject to “regulation and conditions as the board shall prescribe. The Board may delegate the administration of the fund to the State Bar Court, or to any board or committee created by the board of trustees.” Accordingly, the CSF program, including the procedures, rules, and operations of its commission, are left to the State Bar Board of Trustees.²

Board Oversight

The CSFC operates under the oversight of the Board, reporting directly to its Regulation and Discipline Committee (RAD). The Board also exercises its authority through the appointment of the five commissioners; review and approval of recommended changes to CSF rules; and review and approval of the CSF budget. Basic management reports with workload and financial indicators are produced monthly and submitted to RAD.

Key Issues

The commission oversees and administers the CSF, a legislatively created victim restitution program, and decides whether to grant or deny applications for reimbursements. This entails a large volume of work. State Bar staff reviews the applications and makes recommendations to the commission. Although the value and importance of this legislatively created program to the State Bar’s public protection mission is clear, the task force raised the following questions:

1. Should the commission be a subcommittee of RAD, so that the reporting relationships are clearer, with ultimate oversight responsibility vested in the Board?
2. Is there other work that can be brought in-house to be performed by State Bar staff?
3. If current work is transferred to staff, how will that be funded?
4. If current work is transferred to staff, should the size of the commission be reduced?

Committee of State Bar Accredited and Registered Schools (CSBARS)

Source of Authority

Created by Board action in January 2019, the CSBARS advises the Committee of Bar Examiners on matters relating to the promulgation of new rules, guidelines, and amendments to the rules and guidelines for California accredited and unaccredited law schools, as well as other issues related to legal education.

Board Oversight

² See Rules of the State Bar, Title 3, Division 4, Chapter 1, Rule 3.420 et seq. for program rules.

The authority to appoint members is delegated to the chair and vice-chair of the Committee of Bar Examiners.

Key Issues

None

Committee on Professional Responsibility and Conduct (COPRAC)

Source of Authority

Created pursuant to Business and Professions Code Section 6200, the Board of Trustees shall, by rule, establish, maintain, and administer a system and procedure for the arbitration, and may establish, maintain, and administer a system and procedure for mediation of disputes concerning fees, costs, or both, charged by professional services by licensees of the State Bar or by members of the bar of other jurisdictions.

Board Oversight

The COPRAC acts as an advisory body to the Board, drafting fee arbitration advisories that provide guidance to fee arbitrators administering attorney-client fee disputes. Additionally, COPRAC conducts studies and provides advice to the Board on professional responsibility. The appointing authority for COPRAC is the Board.

Key Issues

None

Council on Access and Fairness (COAF)

Source of Authority

The council was created by resolution of the Board at its November 2006 meeting. At that time, the Board voted to sunset five committees that worked on access, diversity, and fairness and to establish COAF in its stead.³ COAF was directed to “regularly convene stakeholder forums to solicit input from all interested parties as to the priorities and the future work of the council.”⁴

Board Oversight

COAF reports to the Board annually regarding year-end accomplishments, using its strategic plan objectives as the framework for that report.

In addition, COAF seeks Board approval of its Strategic Plan each year, to keep the Board informed as to its projected initiatives and activities. If emerging issues warrant significant

³ The following committees were eliminated: Ethnic Minority Relations Committee, Committee on Legal Professionals with Disabilities, Committee on Senior Lawyers, Committee on Sexual Orientation and Gender Identify Discrimination, and Women in the Law.

⁴ State Bar of California, Board of Governors Meeting Minutes, November 17, 2006, p.11.

revision to the plan, COAF returns to the Board to seek approval to modify its Strategic Plan before moving ahead.

Key Issues

The task force raised the issue as to whether COAF should be merged with the now sunsetted California Commission on Access to Justice (CCAJ) or converted into a subcommittee of the CCAJ.

Law School Council (LSC)

Source of Authority

The Committee of Bar Examiners is statutorily required to communicate and cooperate with the LSC pursuant to Business and Professions Code Section 6046.6(b) on the content and format of the bar exam, and law school education and curriculum relating to the bar exam process.

Board Oversight

The authority to appoint members is delegated to the chair and vice-chair of the Committee of Bar Examiners.

Key Issues to Consider

The task force pinpointed two primary concerns: the engagement with law schools and the Board's oversight deficiency. As detailed in Appendix I, while the Governance in the Public Task Force acknowledged the State Bar's need for a formal connection with law schools, they viewed the existing system as offering limited advantages. Additionally, the task force noted the Board Policy Manual doesn't reference the council, and there's no clear oversight by the Board to monitor the council's activities or gauge its efficacy.

Lawyer Assistance Program Oversight Committee (LAPOC)

Source of Authority

The program is mandated by Business and Professions Code section 6230 et seq. and the LAPOC itself is mandated by Business and Professions Code section 6231 and 6232. State Bar Rule 3.240 et seq. and Rule 5.380 et seq. also govern its operations.

Board Oversight

The Board appoints six of the twelve members of the LAPOC and appoints its chair and vice-chair. The LAPOC prepares a legislatively mandated annual report highlighting its activities and key data points from the year in question and submits it to RAD as an informational item after submission to the Legislature.⁵

⁵ See State Bar of California, [2022 California Lawyer Assistance Annual Report](#). This report is mandated by Business and Professions Code Section 6238.

Key Issues

1. The first centered on whether LAP is appropriately situated within the State Bar. The program goal is not in doubt, but the State Bar lacks expertise in matters of substance abuse and mental illness, making it an unusual host. Moreover, concerns have been raised that attorneys might be disinclined to seek assistance from the same entity responsible for attorney discipline, a concern that may explain LAP's low attorney participation rate. A review of other state practices also suggested that many jurisdictions have chosen to structure their parallel programs as separate entities from the regulatory body precisely because of these types of concerns. The direct relationship between LAP and the discipline system, particularly as related to the direct diversion role it plays for some attorneys appearing before State Bar Court, could be a counter to arguments for separation of the program; this perspective suggests that the State Bar has a responsibility to ensure appropriate quality control of the services being provided and can best do so if LAP is part of the State Bar proper.
2. Additional task force discussion centered on the role of the program's statutory LAPOC and the role it plays as related to both Board oversight and program integration with the State Bar's organizational structure.

Review Committee for Commission on Judicial Nominees Evaluation (RJNE)

Source of Authority

Pursuant to State Bar Rule 7.66, RJNE was established to allow candidates the Judicial Nominees Evaluation Commission (JNE) finds unqualified for judicial office to seek reconsideration by RJNE.

Board Oversight

While RJNE is not a statutorily created program, beyond the Board's appointment authority, by statutory design the Board's oversight of this program is minimal in order to preserve confidentiality and direct reporting to the governor.

Key Issues

The task force is not to provide any recommendations for changes to RJNE. Additionally, because the Board has very limited over JNE, staff do not recommend a sunset review of RJNE at this time.