



# The State Bar of California

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## OPEN SESSION AGENDA ITEM 706 JANUARY 2024

**DATE:** January 18, 2024

**TO:** Members, Board of Trustees

**FROM:** Donna Hershkowitz, Chief of Programs & Legislative Director  
Bridget Gramme, Deputy Chief of Programs

**SUBJECT:** Adoption of Preliminary 2024 Legislative Priorities and Affirmative Legislative Proposals

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### EXECUTIVE SUMMARY

Each year, following discussions with the Board of Trustees' legislative liaisons, staff recommend legislative priorities and affirmative legislative proposals for Board approval. With this approval, staff continue to develop the proposals, conduct necessary research, and begin communications with key stakeholders to determine whether and how to pursue these proposals during the current legislative session.

This agenda item identifies the legislative priorities and proposals the Board approved last year that have not yet been adopted by the Legislature during the 2023–24 legislative session, and sets forth a number of potential new affirmative legislative proposals for the Board's consideration relating to public protection, accountability, operational and budgetary efficiency, and access to justice.

Staff are continuing to research additional proposals identified by State Bar staff and leadership and anticipate returning to the Board at the March meeting should these proposals warrant adoption by the Board.

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### BACKGROUND

In May 2022, the Board updated the [State Bar Legislative Program: Purpose and Guiding Principles](#), setting forth the types of matters on which the State Bar engages with the legislative and executive branches in alignment with its Strategic Plan. At that time, the Board directed that the executive director, in consultation with the Board chair and vice-chair, shall be

responsible for determining legislative priorities and proposals on matters that affect the internal operations of the State Bar. As a result, such issues are not included in this agenda item.

Consistent with these principles, the Board adopted a number of legislative proposals in 2023, including measures that would increase the State Bar's transparency and accountability, improve operational efficiency and the discipline system, and strengthen public protection. Of those, over 18 different provisions were adopted and incorporated into the State Bar's annual fee bill, SB 40, including provisions related to conflicts of interest, client security fund collections, bar exam administration, streamlined legislative reporting obligations, authorized use of the building sale proceeds and certain reserves, and technical amendments.

Three significant priorities and proposals were adopted by the Board last year that were not included in SB 40, about which staff continue to engage with legislative staff and other stakeholders: increasing attorney licensing fees, enhancing bank reporting to the State Bar on client trust accounts, and clarifying the Fair Political Practices Commission's administrative enforcement authority with respect to the State Bar. As discussed below, staff recommend that the Board continue to pursue these this year, with some modifications to reflect current circumstances.

After seeking input across the organization, staff have also identified and recommend that the Board adopt eight new affirmative proposals that would increase accountability, improve public protection and operational and budgetary efficiencies, and enhance access to justice. Mindful of the State Bar's ongoing financial challenges, as well as the state's projected deficit this year, these proposals would have minimal fiscal cost as specified in the discussion of each proposal.

## **DISCUSSION**

In past years, the State Bar has identified all of the changes it was seeking through legislation as "legislative priorities." To better highlight the true "priorities" of the Board, going forward staff intends to categorize proposals as either "legislative priorities" or "affirmative legislative proposals."

### **LEGISLATIVE PRIORITIES**

Staff and the legislative liaisons are in agreement that the State Bar's priority for 2024 is to secure a fee increase in the amount necessary for the State Bar to effectively carry out its mission of public protection. Last year the Board adopted as its top legislative priority a proposal to increase attorney licensing fees by \$107 for active licensees. That amount included core operating needs (including meeting contractual obligations for State Bar staff, and discontinuing hiring freezes and forced vacancy rate and well as addressing the structural underfunding identified by the State Auditor) as well as funding for limited growth (including positions for handling client trust account complaints, implementing trust account compliance reviews and audits, reducing backlog in the Complaint Review Unit).

The Legislature declined to increase fees for 2024, but specifically directed the State Bar to submit a detailed report to the Legislature by April 1, 2024, providing written justification for how

it would use revenue generated by a fee increase. (See Bus. & Prof Code § 6145.1).<sup>1</sup> Staff recommend that the Board adopt securing an appropriate fee increase as its single legislative priority for 2024.

## **AFFIRMATIVE LEGISLATIVE PROPOSALS**

### **Public Protection**

- **Bank reporting:** As a key component of the State Bar's ongoing Client Trust Account Protection Program, the Board approved a legislative proposal last year to enhance bank reporting on client trust accounts. In negotiating with the banking industry, the State Bar proposed requiring banks add one element to the existing reporting they already perform on IOLTA accounts: the bar number of the attorney responsible for the account. The proposal would also require banks to report the same information on non-IOLTA client trust accounts as they do on IOLTA accounts. After opposition from the banking industry, the Legislature sought to take a measured approach, expressing the Legislature's intent to work with stakeholders in 2024 to craft a structure to improve bank reporting. Staff have continued to engage stakeholders and legislative staff on this proposal and recommend that the Board continue to pursue this proposal this year.

### **Increased Accountability**

- **Application of the Political Reform Act to the State Bar:** Based on a recommendation from the Ad Hoc Committee on Oversight & Accountability Reforms, the Board adopted a legislative proposal last year to subject the State Bar to certain provisions of the Political Reform Act to clarify the Fair Political Practices Commission's administrative enforcement authority with respect to the State Bar. Because amendments impacting the Political Reform Act typically follow a different path than other State Bar initiated legislative proposals, it was determined that the proposal should be held until 2024. The Office of General Counsel continues to shape the breadth and the language of the proposal consistent with the recommendations of the ad hoc committee. Staff recommend that the Board continue to pursue this proposal in the coming year.
- **Removal of Board members for cause:** The Ad Hoc Committee on Oversight & Accountability Reforms recommended pursuing a statutory change to provide for removal of Trustees for cause. Unlike professional licensing agencies under the purview of the Department of the Consumer Affairs who may seek removal "by the appointing authority for continued neglect of duties required by law, or for incompetence, or unprofessional or dishonorable conduct," (See Bus. & Prof. Code section 106), the State Bar Act is largely silent on the removal of Board members.<sup>2</sup> Staff recommend that the Board adopt an affirmative legislative proposal to amend section 6037 to authorize removal of Board members "for continued neglect of duties required by law, or for incompetence, or unprofessional or dishonorable conduct," consistent with the language in section 106. Staff do not anticipate that this proposal will have a fiscal impact.

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<sup>1</sup> All statutory references to "section" pertain to the California Business and Professions Code unless otherwise indicated.

<sup>2</sup> Currently, absent a conviction for intentional failure to disqualify oneself due to a financial conflict, there are no provisions for removal of a Trustee.

### **Operational and Budgetary Efficiencies:**

- **Flexibility in timing for payment of annual licensing fees:** Currently all licensee fees are payable on or before the first business day of February each year. However, a small subset of licensees, particularly those who do not receive electronic fee statements, or do not have access to or are otherwise unable to submit their annual fees electronically, require a significant amount of staff attention to assist them with the licensing process, impacting the ability of staff to provide even minor assistance to the remaining 250,000 attorneys paying fees and completing annual licensing requirements during the two-month licensing window from early December through the first business day in February. Staff recommend amending sections 6040 (b) and 6141 (a) to delete the specificity for when licensing fees need to be paid and instead permit the State Bar to set the date for submission of the licensing fees, thus providing flexibility for the State Bar to extend the deadline for those who might need more assistance. This would allow staff to process the vast majority of electronic fee renewals more efficiently and give more individualized attention to those who need it outside of the frenzy of the December/January payment period.
- **Revise timing for bar exam evaluation studies:** Current law requires the State Bar at least once every seven years to “oversee an evaluation of the bar examination to determine if it properly tests for minimally needed competence for entry-level attorneys and shall make a determination, supported by findings, whether to adjust the examination or the passing score based on the evaluation.” The next evaluation is due in early 2025. The State Bar has not started these studies in light of the recommendation of the Blue Ribbon Commission on the Future of the Bar Exam to develop a new California Bar Exam, which is currently pending before the Supreme Court. Staff recommend amending section 6046.8 to adjust the timing of the next report in light of anticipated Supreme Court action.
- **Modernize Lawyer Referral Service (LRS) certification:** In 2023, staff conducted an extensive evaluation and developed recommendations to redesign the State Bar’s LRS certification program with an eye towards increasing efficiency in the certification and recertification process, increasing the public’s access to attorneys, and making the program financially solvent. Staff consulted with a number of stakeholders, including legal services organizations, LRS administrators, and bar associations who have recently closed their LRS programs. An issue that rose to the forefront during the process was the fact that current statutory limitations on LRS programs sharing fees with other organizations that are not also certified as an LRS negatively impact many of the goals of the LRS program. For example, a local community organization may serve individuals who present with potential legal issues but may not qualify for free legal services. Unless the organization is itself a certified LRS, it may not partner with an LRS and receive a portion of the fees that could result from matching up clients with an attorney. Similarly, unless a local or affinity bar association maintains a certified LRS program on its own, it cannot partner with other similarly situated associations to connect an individual with an attorney if it involves referral fees. This prohibition has stifled innovation in this space, impacted revenues leading some LRS programs, including those operated by bar

associations, to close, and leaving consumers to fend for themselves if legal aid or other community organizations are unable to help them with their legal problem. Accordingly, staff recommend amending section 6155 to permit formal partnerships between LRS programs and nonprofits, including bar associations, legal services, and community-based organizations, that would allow for a dedicated funding stream resulting from successful referrals and would reach and serve more individuals in need of legal representation. In addition, consistent with the State Auditor's recommendation, staff recommend amending the existing statutory caps on LRS certification fees, which have not been adjusted since they were originally imposed in 1994, to ensure the fees cover the cost of operating the program.<sup>3</sup> Staff will continue to research what other states do in this regard and identify financial needs to help shape the final proposal.

### **Access to Justice**

- **Continuation of earmark of \$5 voluntary contribution to fund summer law fellowships:** Current law authorizes \$5 of the \$45 legal services opt out donation to be used to fund summer fellowships for law students at legal services organizations funded by the State Bar's IOLTA program. The remaining \$40 is added to the IOLTA funding and allocated in accordance with the IOLTA funding formula. The statute earmarking the funds for these fellowships sunsets at the end of 2024, at which point the full \$45 would be allocated as part IOLTA funding. Paid summer opportunities for law students is a useful tool to address public interest drift in law school and may help to address the recruitment and retention crisis in legal aid. The Legal Services Trust Fund Commission funded 76 law students at 35 organizations for summer 2023 and currently are reviewing applications for summer 2024. The program appears well received by grantees, law students, and law schools. Earmarking the \$5 in this way was supported jointly by the State Bar, Legal Aid Association of California, the Access Commission, and CA ChangeLawyers. All have indicated support for continuing the earmark beyond the sunset date. Staff recommend amending section 6140.03 (b)(5) to extend the sunset date on the earmark for an additional five years. Due to high interest rates and the continuing high principal amounts maintained in those accounts, as well as the interest the State Bar has accrued on its funds, IOLTA funded organizations are receiving record levels of funding. This earmarked funding also goes to support IOLTA funded organizations, simply with a specific focus. This earmark of what has amounted to about \$700,00 in past years, will not impact the ability of legal services organizations to meet its important obligations.

### **Technical Amendments:**

- **Update submission requirements for reports subsumed within the Annual Discipline Report (ADR):** In 2021, the Legislature changed the due date of the ADR from April 30 to October 31. In 2023, the Legislature adopted the State Bar's proposal to amend section 6086.15 to change the due date to November 30. However, two statutes requiring certain information to be incorporated into the ADR still maintain the April 30, due date for the report. Staff recommend amending section 6177 (report on construction related

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<sup>3</sup> At the time the Board was considering fee increases to other State Bar programs and services, increases were not sought for LRS fees because of the pending redesign of the program.

access claims) and Civil Code section 55.32(f) (report on lawyers who receive complaints regarding the sale of financial products to elderly clients) to address this inconsistency.

- **Elimination of Obsolete References:** Section 6031.5 requires the State Bar to collect fees for the California Lawyers Association (CLA) if the State Bar makes several determinations. Statutory changes in 2021 relating to CLA governance made cross references in 6031.5 to those governance provisions obsolete or inaccurate. Staff recommends amending section 6031.5 (b) to remove or correct these references.

#### **Further Proposal in Development Stage**

- **State Bar Court judge compensation adjustment:** The judges of the State Bar Court have requested an increase in their compensation, which is set by statute and tied to the state salary of superior court judges, many of whom receive higher or supplemental compensation. There are several ways this goal could be effectuated in a cost-neutral manner. State Bar staff will be engaging with legislative stakeholders to seek feedback on this proposal prior to bringing forward a concrete proposal to the Board.

### **FISCAL/PERSONNEL IMPACT**

Except for funds needed to augment staffing to utilize the enhanced bank reporting most effectively—an amount already incorporated into the fee increase requested in 2023—staff do not anticipate that any of these proposals would increase costs. In fact, the proposed revisions to statutory caps on the Lawyer Referral Services certification fees would increase revenue, and the adjustment to the deadlines for conducting bar exam evaluations would result in significant cost savings if the Bar were required to evaluate the current exam while revisions are pending.

### **AMENDMENTS TO RULES**

None

### **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

### **STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS**

Goal 1. Protect the Public by Strengthening the Attorney Discipline System

- a. 2. Secure additional funding for the attorney discipline system.

Goal 2. Protect the Public by Enhancing Access to and Inclusion in the Legal System

- b. 2. Better understand the knowledge gap and develop strategies to address the barriers consumers face in securing legal advice.

Goal 3. Protect the Public by Regulating the Legal Profession

d. 1. Implement the Client Trust Account Protection Program.

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

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

**RESOLVED**, that the Board of Trustees adopts as a legislative priority securing an increase in the attorney licensing fee to support the operations of the State Bar; and it is

**FURTHER RESOLVED**, the Board of Trustees directs staff to pursue the following affirmative legislative proposals as detailed in this item:

- Continue pursuing enhanced bank reporting of client trust accounts to the State Bar;
- Clarify the Fair Political Practices Commission's administrative enforcement authority with respect to the State Bar;
- Amend section 6037 of the Business and Professions Code to authorize removal of board members "for continued neglect of duties required by law, or for incompetence, or unprofessional or dishonorable conduct,";
- Amend sections 6040 (b) and 6141 (a) of the Business and Professions Code to permit the State Bar to set the date for submission of the licensing fees;
- Amend section 6046.8 of the Business and Professions Code to adjust the timing of the next bar exam evaluation in light of anticipated Supreme Court action;
- Amend section 6155 of the Business and Professions Code to permit certified Lawyer Referral Services to establish formal partnerships with nonprofits and revise statutory caps on Lawyer Referral Service certification fees;
- Amend section 6140.03 (b)(5) of the Business and Professions Code to extend the sunset date on the earmark to fund summer law fellowships for an additional five years;
- Amend section 6177 of the Business and Professions Code and section 55.32(f) of the Civil Code to eliminate incorrect references; and
- Amend section 6031.5 (b) of the Business and Professions Code to remove or correct obsolete references.

## ATTACHMENT LIST

None