



The State Bar of California

OPEN SESSION AGENDA ITEM 702 MARCH 2024

DATE: March 21, 2024

TO: Members, Board of Trustees

FROM: Donna Hershkowitz, Chief of Mission Advancement & Accountability
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Admissions, Access & Inclusion

SUBJECT: Update on Legislation and Adoption of Affirmative Legislative Proposals

EXECUTIVE SUMMARY

At its January 2024 meeting, consistent with the [State Bar Legislative Program: Purpose and Guiding Principles](#), the Board adopted as a legislative priority securing an increase in the attorney licensing fee to support the operations of the State Bar. It also approved a number of affirmative legislative proposals for 2024 relevant to public protection, accountability, operational and budgetary efficiencies, access to justice, and technical amendments.

This item provides the Board with an update on the previously adopted proposals and seeks the Board's adoption of six additional affirmative proposals for 2024 in five categories as summarized below.

BACKGROUND

At its January 18, 2024, meeting ([Item 706](#)), in addition to adopting a fee increase as the State Bar's legislative priority for 2024, the Board adopted nine affirmative legislative proposals to pursue this year.

As previewed in January, staff have been continuing to research additional proposals identified by State Bar staff across the organization over the past few months. Staff recommend that the Board adopt seven additional legislative proposals for 2024.

DISCUSSION

UPDATE ON EXISTING PROPOSALS

- [AB 3279 \(Committee on Judiciary\)](#) – **Annual Fee Bill**: On February 29, 2024, the Assembly Judiciary Committee introduced [AB 3279](#), which will be the bill setting attorney licensing fees for 2025. The bill already includes the State Bar’s requested elimination of an obsolete reference in section 6031.5, and the requested technical amendment to update the submission requirements for components of the Annual Discipline Report. The bill does not yet include the amount of the annual fee; the Legislature will be informed by the report the Board is reviewing at its meeting today ([Item 701](#)) which will be submitted to the Legislature on April 1. Staff are currently working with stakeholders and judiciary committee staff to provide language on the other affirmative proposals to include in the fee bill at a later date. Staff expect the committee to hold a hearing on the fee bill in late April.
- [SB 1476 \(Blakespear\)](#), introduced on February 16, 2024, is the State Bar-sponsored bill containing the Board’s proposed amendments to require the State Bar to maintain conflict of interest codes in compliance with the Political Reform Act of 1974 and subject members of the Board and designated State Bar employees to enforcement of violations of the Political Reform Act. The bill is double referred to the Committees on Elections and Constitutional Amendments and Judiciary. It has not yet been set for hearing.

PROPOSED ADDITIONAL AFFIRMATIVE PROPOSALS:

Public Protection

- **Client Trust Account Protection Program (CTAPP) – Preserving Confidentiality of Records in Compliance Reviews and Audits – Amend Business and Professions Code (BPC) section 6086**: In its fee increase request package, the State Bar is seeking funding to support the expansion of the CTAPP to include compliance reviews and audits. Should the State Bar be able to expand the program in this way, a statutory change enabling the State Bar to access a complete set of the client trust account records pursuant to a CTAPP compliance review or audit, is needed. Staff recommend that the Board adopt as an affirmative legislative proposal, contingent on receiving the necessary fee increase to support this work, to amend section 6086 (and potentially the Evidence Code) to clarify that State Bar requests pursuant to a compliance review or audit of trust accounts are exempt from the attorney/client privilege and that, while the State Bar may use the documents as evidence in a subsequent disciplinary or law enforcement action where appropriate, the attorney/client privilege and duty of confidentiality would not be waived or extinguished by turning the information over to the State Bar.

Access to Justice

- **Justice Gap Fund – Amend BPC section 6033**: In response to declining Interest on Lawyers’ Trust Accounts (IOLTA) revenue and in an effort to create a consistent revenue source to support legal aid, the Legislature authorized the creation of the Justice Gap

fund in 2006 through Business and Professions Code section 6033, which is currently a \$45 "opt-out" donation on the attorney licensing fee statement. The total revenue for the Justice Gap Fund is typically between \$6 to 8 million annually. Per statute, this revenue is combined with the rest of IOLTA revenue to be distributed to grantees through the IOLTA formula. Rising interest rates have resulted in record IOLTA grant distributions over the last several years. Given that there is not an immediate need to supplement IOLTA revenues, staff recommend that the Board adopt an affirmative legislative proposal, in partnership with the Legal Aid Association of California, to amend section 6033 to permit a more flexible use of the Justice Gap Fund revenue. Specifically, the amendment would permit the funding of projects responding to significant issues, as determined by the Legal Services Trust Fund Commission, such as disaster legal services, pro bono legal services, and legal aid recruitment and retention.

- **Homelessness Prevention Grants:** Since 2019, the Legal Services Trust Fund Commission has administered grants to legal aid organizations for homelessness prevention assistance. That funding is due to expire this year and the Legal Aid Association of California intends to seek an additional \$15 million to continue funding this work. Staff recommend that the Board support the effort to seek an additional \$15 million of funding.

Operational Efficiencies/ Clarifying Amendments

- **Non-JD Programs at Non-Law Schools – Amend BPC sections 6060.7 and 6046.7:** In 2006, the Legislature passed SB 1568 (Dunn), which transferred the regulation of unaccredited law schools from the Bureau of Private Postsecondary and Vocational Education to the Committee of Bar Examiners (CBE). In addition to unaccredited law school regulation, the statutes also include within the scope of the CBE's regulatory authority "law study" programs at "non-law schools." While the statutes could be read to include non-JD programs as falling within the scope of the committee's oversight, it appears from a review of the legislative history that the intent of the bill was to authorize the committee to oversee programs that would produce potential licensees of the State Bar. In the years since the bill was enacted in 2006, there has been a significant expansion of legal studies programs that do not grant a JD degree and do not entitle their graduates to sit for the California Bar Exam. At its March 15, 2024, meeting the CBE held a discussion on this topic, during which committee members generally agreed that the committee's current oversight role was appropriate, due, in part, to its lack of available resources and capacity to take on an expanded role in overseeing additional programs. Committee members also made suggestions to ensure future statutory language does not inadvertently impact current oversight and admissions practices. Informed by CBE's discussion, staff recommend that the Board adopt an affirmative legislative proposal to amend these statutes to clarify that the committee's oversight applies solely to JD programs whose graduates are eligible to sit for the California Bar Exam.
- **Statute of Limitations on Client Security Fund Commission (CSF) Appeals – Amend BPC section 6140.5:** In 2010, the Board adopted a rule of procedure that judicial review of

CSF commission decisions on applications for reimbursement must be filed within 90 days of service of the decision (State Bar Rule 3.434). The 90-day period is consistent with the limitations period for judicial review of local agency decisions set forth in Code of Civil Procedure section 1094.6 and greater than the 30-day period for judicial review applicable to state agency decisions governed by the Administrative Procedures Act (Gov. Code, § 11523). In addition, consistent with the Supreme Court's decision in *Saleeby v. State Bar* (1985) 39 Cal.3d 547, State Bar Rule 3.434 provides that the judicial review of the decision will be pursuant to Code of Civil Procedure section 1094.5. Because typically the Legislature is the entity to determine the applicable statute of limitations, staff recommend that the Board adopt an affirmative legislative proposal to amend section 6140.5 to specify that a 90-day statute of limitations period applies for judicial review, and because the rule has been in place on this issue since 2010, that the 90-day limitations period applies both retrospectively and prospectively.

- **Law Corporation Registration Revocation – Amend BPC section 6168 and 6169:** The State Bar is investigating an organization that is registered with the State Bar as a law corporation. Sections 6168 and 6169 of the Business and Professions Code outline a process to investigate a law corporation and establish a process for the State Bar to follow if there is reason to believe that a law corporation has violated the State Bar Act or any other pertinent rule or statutes. Specifically, section 6169, which has not been substantively amended since 1968, requires the State Bar to conduct a hearing before a standing or special committee appointed by the Board to revoke a registration. The statute also provides that at the hearing, the State Bar and the corporation are entitled to issue subpoenas, to be represented by counsel, to present evidence, and examine and cross-examine witnesses. Staff recommend that the Board adopt an affirmative legislative proposal to amend these statutes in light of the current role of the Board of Trustees and the existing structure of the State Bar.
- **Attorney Oath Cards:** Section 2015 of the Code of Civil Procedure states that when an affidavit is taken before a judge or a court in another state or in a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that such judge is a member thereof must be certified by the clerk of the court, under the seal thereof. Accordingly, if an out-of-state judge administers an oath for a California attorney oath card, a seal is required. In practice, however, judges rarely include the seal on the attorney's oath card. Staff recommend that the Board adopt an affirmative legislative proposal to exempt these oaths from the requirements of section 2015.

FISCAL/PERSONNEL IMPACT

Staff do not anticipate that any of the above-described legislative proposals would have a fiscal or personnel impact on the State Bar.

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

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

- b. 1. Continue to analyze data points to identify the root causes of inequities in accessing legal services and reduce the access to legal services gap.

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 directs staff to pursue the following affirmative legislative proposals as detailed in this item:

- Seek a legislative amendment to permit the State Bar to access client trust account records as part of the Client Trust Account Protection Program's Compliance Reviews and Audits while preserving the confidentiality of client records.
- Amend section 6033 of the Business and Professions Code to permit a more flexible use of Justice Gap Fund revenue, as determined by the Legal Services Trust Fund Commission.
- Support the Legal Aid Association of California in their efforts to seek an additional \$15 million of funding for Homelessness Prevention grants.
- Amend sections 6060.7 and 6046.7 of the Business and Professions Code to clarify that the Committee of Bar Examiners' oversight applies solely to JD programs whose graduates are eligible to sit for the California Bar Exam.
- Amend section 6140.5 of the Business and Professions Code to specify that a 90-day statute of limitations period applies for judicial review, and that the amendment should apply retroactively.
- Amend sections 6168 and 6169 of the Business and Professions Code to delete the provisions requiring decisions to revoke registration of a law corporation to

be considered by a panel of the Board and conform to the revocation procedure to a process supported by existing State Bar infrastructure.

- Seek a legislative amendment clarifying that section 2015 of the Code of Civil Procedure does not apply to attorney oath cards.

ATTACHMENT LIST

None