



THE STATE BAR OF CALIFORNIA

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Title of Report: Measures To Implement Strategic Plan and To Enhance and Ensure Public Protection
Statutory Citation: Business and Professions Code sections 6001.2 and 6140.12
Date of Report: February 11, 2016

Business and Professions Code section 6140.12 (added Stats. 2011, ch. 417, § 47) requires that the State Bar of California's Board of Trustees complete and implement a five-year strategic plan to be updated every two years and that each year by February 15, the State Bar president's report to the Supreme Court, the Governor, and the Senate and Assembly Committees on Judiciary on the measures the board has taken to implement the strategic plan and those measures the board will need to take in the remaining years of the strategic plan. Business and Professions Code section 6001.2 (added Stats. 2011, ch. 417, § 2.5) also requires that the State Bar, commencing in 2015 and every three years thereafter, submit by May 15 a report on its measures and recommendations for enhancing the protection of the public and ensuring that protection of the public is its highest priority. To comply with both these provisions, the State Bar's Board of Trustees annually holds a planning session to review the State Bar's progress in implementing its strategic plan and to consider and propose other measures to enhance its mission of public protection, including proposals to ensure access to justice and diversity in the justice system consistent with that mission.¹

The following summary of the State Bar president's report is provided under Government Code section 9795.

The report enumerates measures the board has taken to implement the strategic plan in 2015. In addition, it is also intended to update the State Bar's progress in implementing the goal set forth in Business and Professions Code §6001.2 of "enhancing the protection of the public and ensuring that protection of the public is the highest priority in the licensing, regulation, and discipline of attorneys."

The full report is available at: <http://www.calbar.ca.gov/AboutUs/Reports.aspx>.

A printed copy of the report may be obtained by calling 916-442-8018.

¹ As a result, the full Board, instead of only 7 its members as provided in Business and Professions Code section 6001.2, participates in the development of the measures and recommendations under both statutes.



THE STATE BAR OF CALIFORNIA

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President

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February 11, 2016

Honorable Chief Justice and Associate Justices
The Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Honorable Jerry Brown
Governor, State of California
State Capitol, First Floor
Sacramento, CA 95814

Honorable Hannah-Beth Jackson
Chair, Senate Committee on Judiciary
State Capitol, Room 2032
Sacramento, CA 95814

Honorable Mark Stone
Chair, Assembly Committee on Judiciary
State Capitol, Room 5155
Sacramento, CA 94249

Dear Chief Justice Cantil-Sakauye and Associate Justices, Governor Brown, Senator Jackson and Assemblyman Stone:

I am writing to update you, first, on the actions taken by the State Bar's Board of Trustees at its 2016 annual January Planning Meeting to implement the Bar's Five-Year Strategic Plan. Second, this letter also reports on the work of the State Bar to develop its triennial report on Governance in the Public Interest. Both activities are required by statute. Business and Professions Code §6140.12 requires that each year, in conjunction with the submission to the Legislature of the State Bar's proposed final budget by February 15 as required by Business and Professions Code § 6140.1, the President of the State Bar of California "...shall report to the Supreme Court, the Governor, and the Senate and Assembly Committees on Judiciary about the measures the Board has taken to implement the strategic plan and shall indicate the measures the board will need to take in the remaining years of the strategic plan to address the projected needs contained in the plan" respectively. Supplementing this strategic planning process, a second report by the Task Force on Governance in the Public Interest, mandated in 2011 under Business and Professions Code §6001.2, is required to be prepared and considered every three years.

Statutory Design and Requirements

All activities of the State Bar, including its strategic planning responsibilities, are subject to Business and Professions Code section 6001.1, added by Statutes 2011, chapter 417 (Sen. Bill No. 163),¹ which provide that protection of the public shall be the highest priority for the State Bar. Section 6001.1 further states: "Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." SB 163 also required that the Board of Trustees of the State Bar complete and implement a Five-Year

¹ Hereinafter, "SB 163."

Strategic Plan. (Bus. & Prof. Code, § 6140.12, added SB 163, § 42.) In compliance with SB 163 and relevant statutory authorities, the Board adopted a Five-Year Strategic Plan in 2012 that set forth goals and measures for the State Bar consistent with its mandated priority of public protection for the current five year period (2012-2017).

In addition to providing the yearly update required by Business and Professions Code § 6140.2, this report is also intended to update the State Bar's progress in implementing the mandate of Business and Professions Code §6001.2 which requires a second report from the State Bar on "recommendations for enhancing the protection of the public and ensuring that protection of the public is the highest priority in the licensing, regulation, and discipline of attorneys." This second report is required by statute to be prepared by a Task Force on Governance in the Public Interest which is comprised of six members of the Board of Trustees, with the State Bar President as its chair and seventh member. Beginning in May 2014, and every three years thereafter, the report is required to be presented to the Supreme Court, the Governor, and the Assembly and Senate Committees on Judiciary. Section 6001.2 also provides that the Task Force make suggestions to the full Board regarding possible additions to, or revisions of, the strategic plan.

As noted above, to address these complementary planning responsibilities, the Board of Trustees takes two actions. First, each January it holds a planning session to review the State Bar's progress in implementing its Five-Year Strategic Plan and to consider and propose other measures to enhance its mission of public protection, including proposals to ensure access to justice and diversity in the justice system consistent with that mission. Second, beginning in 2011 the Board created a Task Force on Governance in the Public Interest pursuant to Business and Professions Code section 6001.2. The Task Force must be re-constituted annually as statute requires that it be chaired by the sitting State Bar President and its members elected from specific categories of Trustees, whose terms may vary.² At its October 2015 meeting, and pursuant to the three-year cyclical nature of Task Force composition, the Board established a new Governance in the Public Interest Task Force, which will be charged with developing the 2017 report. To this end, the Task Force has now outlined an ambitious 2016 schedule, which anticipates at least two Task Force meetings and two public hearing meetings (in Los Angeles and San Francisco), followed by a Task Force report to the full Board of Trustees by mid-2016. When adopted, the Board of Trustees will forward the Task Force's report to the Supreme Court, the Governor and the Legislature.

The Task Force initially plans to focus on the following issues: further possible refinements to the structure and composition of the Board of Trustees; the organizational structure and functions of the State Bar; and the impact of the *North Carolina State Board of Dental Examiners* case on the State Bar. In addition, the Task Force is watching for the impending release of the United States Supreme Court decision in *Friedrichs v. California Teachers Association*, which may impact the future structure and operations of the State Bar.

Additionally, staff is assisting the Task Force by providing a historical review of past comprehensive reports of the State Bar and updating these earlier studies to provide the

² It should be noted that the full Board, instead of only 7 members as required for the Governance in the Public Interest Task Force, participates in the development of the measures and recommendations for the Strategic Plan under both sections 6001.2 and 6140.12 of the Business and Professions Code.

necessary background and context for consideration of the topics identified for discussion. A copy of the document outlining all of these issues is attached. (Attachment A)

2012-2017 Five-Year Strategic Plan: Original Goals

On February 10, 2012 the Board adopted a Five-Year Strategic Plan that identified three large-scale initiatives which the State Bar would undertake to re-engineer the organization for sustainable, lasting improvement consistent with its public protection mission. These initiatives, along with corresponding updates on implementation progress achieved in 2015, are outlined below.

1. Modernize State Bar Information Technology

In 2015, the State Bar moved to terminate its contract with Sustain, Inc. for a Case Management System ("CMS") for the Office of the Chief Trial Counsel ("OCTC"). Although the contract had been in place for four years, a viable CMS had not been delivered as of the date of termination, and the parties were in disagreement regarding the next steps needed to realize that end. Selection of a new vendor thus seemed appropriate.

Following contract termination, a Request for Proposals (RFP) was issued for a CMS with an expanded scope of work to include both OCTC and the State Bar Court ("SBC"), with optional modules for Probation and Member Records and Compliance. Bids were submitted on February 4, 2016, and are being evaluated at this time.

In addition, the Bar is developing requirements to be included in an RFP for the Admissions system; that RFP is expected to be issued sometime this year.

Finally, in early January 2016, the Bar began work with a vendor selected in an RFP process to modernize its website.

2. Preserve and Improve State Bar Facilities

The Board's 2015 and 2016 adopted budgets include funding for needed capital improvements for the 180 Howard Street, San Francisco building, with work authorized and commenced to repair and modernize heating, ventilation, and air conditioning systems. In addition, the Board recently authorized a \$10 million loan for 180 Howard Street tenant improvements; these funds will support the rehabilitation and construction work needed to enable the Bar to fully lease all available space at that location. Additional rental income generated by the build-out will result in this loan being fully repaid in approximately seven years and also recognize benefits from reduced rental costs on an on-going basis.

3. Streamline the Bar's Programs and Processes

The Bar's new executive leadership team, hired in September 2015, is actively engaged in assessing the organization's business practices and processes. These efforts will benefit from Workforce Planning, which is being conducted in response to both State Auditor recommendations and legislative directive.³ In alignment with the overall goal

³ Business and Professions Code 6140.16(a): To align its staffing with its mission to protect the public as provided in Section 6001.1 and to provide guidance to the State Bar and the Legislature in allocating resources, the State Bar shall develop and implement a workforce plan for its discipline system and conduct a public sector compensation

of streamlining operations, the Bar has expanded the scope of its mandated Workforce Planning to include a business process reengineering assessment of several key functions, including high volume call intake and information technology support. Re-engineering areas have been identified based on the frequency of a significant number of staff performing similar functions in a disaggregated manner throughout the organization. The Bar expects the combined results of review of such concurrent activities to offer opportunity for significant restructuring and streamlining of its operations, with corresponding economy and efficiency.

2012-2017 Five-Year Strategic Plan: Additional 2014 Goals

In 2014, the Board of Trustees reviewed its 2012 Strategic Plan and added three new policy initiatives:

4. Develop External Relations in Support of more Proactive Approaches to Public Protection

The State Bar's 2015 prevention and enforcement activities include: processing of both attorney and non-attorney complaints alleging immigration fraud, including specialized handling of "notario" complaints; maintaining and advertising an Immigration Hotline; interagency collaboration to ensure effective enforcement, given the overlapping regulatory and criminal implications of "notarios" and other non-attorneys engaged in the unauthorized practice of law; 2015 calendar year distribution of more than 20,000 educational and fraud prevention materials through churches, consulates, and nonprofit organizations, schools and courts throughout California; engagement with Spanish-media outlets including Univision, Telemundo, and others; 'town hall' meetings, at which the State Bar partnered with elected officials, consumer agencies, nonprofit legal services and community organizations to maximize outreach efforts to the Spanish and Chinese speaking communities; creation of Spanish language brochures, including *Finding the Right Lawyer*, *A Lawyer Referral Service Can Help You* and *The Client Security Fund Can Help You*; and facilitation of complaints against non-attorneys regarding immigration fraud or other matters via a new complaint form, posted on the website in English and Spanish.

5. Actively Monitor Trends in the Legal Marketplace to Identify Regulatory Changes Needed to Adequately Protect the Public

At their annual planning meeting the Board of Trustees regularly considers emerging trends affecting the provision of legal services and regulation of the legal profession. Topics discussed at recent planning meetings have included public protection; increased access to justice; and the emerging and unregulated legal sector. Additionally, the Board of Trustees has received reports from the following task forces: Task Force on Admissions Regulation Reform; Task Force on Limited Licensing; Civil Justice Strategies Task Force; and the Committee of Bar Examiners Regarding A Two Year Bar Exam.

and benefits study. The workforce plan and compensation study shall be used to reassess the numbers and classifications of staff required to conduct the activities of the State Bar's disciplinary activities.

6. *Operations Re-engineering to Improve Organizational Performance Management*

Though added as an additional policy initiative in 2014, in practical effect this goal mirrors the 2012 goal, Streamlining the Bar's Programs and Processes; implementation activities as related to both initiatives are outlined above.

2012-2017 Five-Year Strategic Plan: 2016 Final Year Update

At its January 2016 Planning Meeting, the Board of Trustees reviewed preliminary goals and objectives for its next 2017-2022 Five-Year Plan. These were adopted in July, 2015 with the understanding that further review and the addition of metrics would be required before they become operational. The January 2016 review delayed implementation of the new 2017-2022 Five-Year Plan in order to take advantage of the final year of the current 2012-2017 Plan and to take advantage of the arrival of a new executive leadership team charged with a comprehensive review of the State Bar's operational systems and the need to implement the June 2015 State Audit recommendations. With these tasks completed, it will be possible for the Board to move forward with implementing the 2017-2022 Five-Year Plan.

As a result, at its January 2016 Planning Meeting the Board officially adopted an updated set of goals and objectives for the final year of its current 2012-2017 Five-Year Plan. Although these one year goals for 2016 anticipate the proposed goals for the next five year plan, they also reflect input from the Bar's staff leadership that a large number of significant non-discretionary initiatives currently underway must first be completed before beginning a new five year plan. They include the following:

1. *Ensure a timely, fair, and appropriately resourced discipline and regulatory system and implement effective prevention and education strategies aimed at promoting public protection.*

- Conduct and implement Workforce Planning for the discipline system;
- Review and implement a Classification and Compensation Study for the discipline system, as part of an organization-wide effort;
- Develop and implement transparent and accurate reporting and tracking of the health and efficacy of the discipline system, to include (a) completion of the annual discipline report and assessment of ways to enhance the process for the completion and review of future reports (b) developing and implementing an appropriate backlog metric and seeking any needed statutory changes in regard to that metric, and (c) assessing ways to staff a dedicated data and research function;
- Develop and deploy a new CMS for OCTC and SBC;
- Expeditiously refine, adopt and implement phased-in and/or modified Task Force on Admissions Regulation Reform (TFARR);
- Manage the review, recommendation for Supreme Court adoption, and promulgation of new Rules of Professional Conduct as prepared by the Rules Revision Commission;
- Complete full implementation of the 2015 State Auditor's recommendations; and
- Consider and implement the most effective mechanism for ensuring compliance with mandatory continuing legal education requirements.

2. ***Proactively inform and educate stakeholders about the State Bar's responsibilities, initiatives, and accomplishments.***
 - Develop and implement a Communications Strategy Plan for timely and effective external and internal communication;
 - Manage and support the Governance in the Public Interest Task Force and its recommendations and continue to address the implementation of the California Public Records Act and Bagley-Keene open meetings act on a Bar-wide basis;
 - Redesign the State Bar website to improve access, legibility and utility for all stakeholders; and
 - Design and implement a program of preventative education.
 - Continue to play an appropriate role in preventing and remedying the Unauthorized Practice of Law in cooperation with law enforcement agencies empowered to prosecute this crime, and to continue dialog with the Legislature and other Stakeholders about the Bar's statutory authority and appropriate role in this area

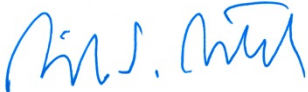
3. ***Improve fiscal and operational management, emphasizing integrity, transparency, and accountability.***
 - Complete the Workforce Planning and Classification and Compensation Studies and develop and implement action plans to improve personnel and fiscal resource utilization;
 - Improve productivity through performance accountability, training, and professional development;
 - Improve staff morale and career satisfaction through recognition of performance, career path development, and transparent and collaborative communication;
 - Reallocate funds to reflect expenditure review, new reserve policy, and other reengineering efforts;
 - Clarify and harmonize policy and regulatory mandates impacting the Bar arising from statutes, changes in Board composition and leadership, including Board Book review and update for consistency between statutory requirements and management policy directives;
 - Develop a three-year technology plan to use appropriate technology to facilitate information sharing and records management; ensure sufficient funding for the plan and staff training to support its implementation; and
 - In conjunction with annual budgets, ensure maintenance and use of the Bar's Los Angeles and San Francisco buildings to maximize benefit to the Bar and the people of California.

4. ***Support Access to Justice and improvements in the Justice System***
 - Support increased funding and enhanced outcome measures for Legal Services;
 - Support increased access to justice by working with the California Commission on Access to Justice, Council on Access and Fairness, and Standing Committee on the Delivery of Legal Services, to identify and develop programs for implementation by partner organizations; and
 - Support adequate funding of the Client Security Fund.

Though an ambitious agenda for 2016, we are well positioned to make significant progress on achieving these updated one year goals and bringing our Five Year Strategic Plan for 2012-2017 to a successful completion. The Board of Trustees also looks forward to the development of a new, comprehensive Five-Year Strategic Plan for 2017-2021 in early 2017 which will take advantage of the work already begun at the 2015 Planning Session, as well as the recommendations from the triennial Task Force on Governance in the Public Interest, expected to be considered by the Board of Trustees in mid-2016.

Please do not hesitate to contact us if you have any questions or would like any further information about this ambitious agenda of activity.

With Kind Regards,



David Pasternak
President
The State Bar of California

cc: Carin Fujisaki, Principal Attorney to the Chief Justice of the Supreme Court of California
Gregory Fortescue, Supreme Court Civil Central Staff
Nancy McFadden, Executive Secretary, Office of the Governor
June Clark, Deputy Legislative Secretary, Office of the Governor
Tara Welch, Chief Counsel, Senate Judiciary Committee
Alison Merrilees, Chief Counsel, Assembly Judiciary Committee



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DATE: December 5, 2015

FROM: Elizabeth Parker

TO: Governance in the Public Interest Task Force
Board of Trustees

RE: Revised - Questions for 2016 Governance in the Public Interest Task Force Work Plan

Anticipating the December 9, 2015 meeting of the Task Force on Governance in the Public Interest, President Pasternak, as chair of the Task Force, has asked staff to develop an outline of questions to assist the Task Force in designing a 2016 agenda. The outline below is not intended to be exclusive, but is offered to help Task Force members meet an ambitious 2016 schedule, which anticipates at least two Task Force meetings and two public hearing meetings (in Los Angeles and San Francisco), followed by full report to the full Board of Trustees by mid-2016. The adopted report will then be sent to the Supreme Court, the Governor and the Legislature. The following questions should be considered as a starting point for discussion on December 9, when the Task Force will work to design an agenda for the remaining meetings. Staff will also assist in this process by providing an historical review of comprehensive reports of the State Bar done in 1995 and 2011. These earlier studies will be updated to provide the necessary background for consideration of the topics identified for discussion.

A. Selection and Composition of the State Bar Board of Trustees

Recent statutory changes in the means of selecting Trustees has altered the composition of the Board, changing both size, means of selection and balance between lawyer (i.e. 'active market participants') and public members. State Bar members now elect only six Trustees, with the remaining thirteen Trustees named by one of three branches of State government. This latter group of appointed Trustees, however, includes only six public members who are not 'non market participants'. Are there additional changes which should be considered in the selection and composition of the Board to achieve:

1. Greater geographic diversity among *all* Trustees;
2. A reduction in the number of Trustees who can be defined as 'active market participants' under recent case law or FTC guidelines, whether or not they are 'public members', appointed, rather than elected by the members of the State Bar;

3. Elimination of elections for *both* individual Trustees and officers of the Board of Trustees (President, Vice President and Treasurer);
4. Different or limited terms of office for Trustees and/or officers;
5. Appointment of Officers.

B. Organizational Structure and Functions of the State Bar of California

Since its inception in 1927, the State Bar of California, like over thirty sister organizations in the U.S. (and all in the Western states except Colorado), has operated with a 'unified bar' structure, combining two roles: protection of the public and advancing the legal profession. The remaining jurisdictions require membership in a bar and dues paid to support a discipline system under their State Supreme Courts, but place traditional associational activities (education, outreach, support for the legal system and legal services) in 'voluntary' bar associations.

Often complementary, these two roles can on occasion create either the reality, or the appearance, of conflict, when member interests have the potential for opposing those of the public in protection and economic freedom. As a result, nationally, a debate has begun on whether state bar organizations should be 'de-unified', to avoid such real or perceived conflicts, to simplify structures, and to make funding of the discipline system more transparent. At the same time, some continue to question whether requiring membership is Constitutionally suspect under First Amendment principles of freedom of association.

In contrast, many others argue that unified bar organizations best serve the public interest by enabling programs which improve the quality of the legal profession, support the Bar's efforts to achieve an accessible and responsive legal system, and contain anti-competitive responses to market forces seen in some 'voluntary' bar associations. In addition, is a statewide voluntary bar feasible in California, which has a multitude of successful local bar associations (geographic, subject matter, and based on heritage) throughout the State? This debate raises a variety of questions.

1. What is the experience among other U.S. states in choosing either a unified or voluntary structure for bar discipline and membership responsibilities?
2. What are the advantages and disadvantages of both forms of bar organization?
3. What impact would a change from unified to voluntary bar organization have on the State Bar of California and what would the resulting structures look like?
4. What can be learned from the experience of other professions, where regulatory and membership functions have been separated?
5. Supervision and Oversight (committee structure).
6. Impact of Bagley-Keene Act.

C. The Impact of a Recent U.S. Supreme Court Decision on State Bar Supervision

The Recent case of North Carolina State Board of Dental Examiners v. Federal Trade Commission, 574 U.S. ____, 135 S.Ct. 1101 (2015) held that if a state delegates licensing and regulatory authority to a state agency controlled by a board of majority dentists, the actions taken by such a self-regulating agency risk being found anticompetitive. If state government 'sovereign immunity' is to be allowed as an exception to the antitrust laws for the actions of such bodies, the 'active supervision' of a governmental body is required, even when the action is taken under a clearly articulated state law. The decision thus raises questions for all regulatory organizations composed of a majority of 'market participants', i.e. members of the professions being regulated, such as the State Bar of California. In the case of the State Bar, as part of the judicial branch overseen by the Supreme Court of California, the North Carolina State Board raises several governance questions.

1. What changes to the State Bar Board of Trustees currently composed of a majority of practicing lawyers could or should be considered in its governance structure to avoid the characterization that the regulatory activities of the State Bar are controlled by active market participants? What might these changes involve?
2. What is required to achieve 'active supervision' of a state regulatory agency by a governmental body, in this case the Supreme Court of California?
3. Are all regulatory responsibilities of the State Bar 'actively supervised' as currently operated and if not, what changes should be considered?
4. To what extent does the Supreme Court now have, and should the Supreme Court have, exclusive operational oversight and authority over the State Bar?
5. Immunity vs. indemnification; what are the remedies?
6. Expansion of State Bar regulatory authority to include the ancillary providers of legal services by non-lawyer entities.

To Do:

1. Set dates for subsequent meetings.
2. 2 - 3 additional meetings
 - a. 1st meeting will consist of other relevant entities, boards and bars
3. 2 public hearings (SF / LA)
 - a. Public hearings to include public entities, bar entities, academics and boards