



# THE STATE BAR OF CALIFORNIA

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The State Bar of California has submitted a report to the Legislature in accordance with Business and Professions Code section 6001.2 (b).

This third report of the Governance in the Public Interest Task Force is designed to serve as a capstone of a series; in particular, it is intended to build on and complete the work of the second Task Force Report issued in 2016. Together the changes recommended in all three reports, some already well underway, are redesigning the State Bar and providing a road map for its reform.

The 2017 Task Force began its work by developing an agenda around three themes as outlined below, designed to capture work remaining from the 2016 Task Force Report, and reflecting the impact of the provisions of the current 2018 fee bill, which was introduced during its tenure:

- **Defining the Bar's Public Protection Mission.** Pursuant to an extensive review of the history of the State Bar's understanding of its statutory mission, the Task Force developed the following mission statement for Board of Trustee consideration:

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The State Bar of California's mission is to protect the public and includes the primary functions of licensing, regulation and discipline of attorneys; the advancement of the ethical and competent practice of law; and the promotion of efforts for greater access to, and inclusion in, the legal system.

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- **Board Composition and Governance.** The Task Force identified a number of changes to Board composition and governance, most tracking related elements of the 2018 fee bill, with notable exceptions as related to optimal Board size.
- **Board Committee and Sub-Entity Structure and Effectiveness.** The Task Force identified parameters for a thorough evaluation of each sub-entity, a restructuring of Board Committees, and alignment of sub-entities and Board Committees to ensure appropriate and effective oversight.

In addition to these thematic areas, the Task Force addressed State Bar organizational reform that will be needed to further advance the goal of clarity and excellence in the fulfillment of the Bar's public protection mission.

This summary is provided under Government Code section 9795. The 2017 Task Force Report can be accessed at: <http://www.calbar.ca.gov/AboutUs/Reports.aspx>.

A printed copy of the report may be obtained by calling 415-538-2299.

# Report of the Governance in the Public Interest Task Force

May 15, 2017



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## EXECUTIVE SUMMARY

Created in 1927, the State Bar of California has been the subject of repeated reviews and efforts at reform for nearly four decades. Recognizing that years of reports and recommendations had resulted in little actual reform, the Legislature created the Governance in the Public Interest Task Force (Task Force) in 2010. Under the enabling statute, Business and Professions Code section 6001.2, a body originally statutorily composed of 11 members of the Board of Trustees was tasked to deliver a report directly to the Supreme Court, the Governor and the Legislature, making “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.” The Task Force’s first report was issued in 2011, identifying critical areas of needed governance reform. Many recommendations identified in that report are now embodied in the State Bar’s governing law, including renaming the Board of Governors to the Board of Trustees, adding Supreme Court appointed trustees to the Board, creating new electoral districts based on appellate court district boundary lines, reducing Board size, adopting open meeting requirements, and revising the State Bar’s statutory directive to make public protection paramount.

Thereafter, the Task Force statute was repealed and replaced. The new statute reduced the size of the Task Force to seven members and directed the Task Force to make suggestions to the Board of Trustees regarding the strategic plan and other issues as requested by the Legislature, in addition to fulfilling its original mandate. This third Task Force Report is designed to serve as a capstone of the series; in particular, it is intended to build on and complete the work of the second Task Force Report issued in 2016. Together the changes recommended in all three reports, some already well underway, are redesigning the State Bar and providing a road map for its reform.

Unlike the initial 2011 Task Force Report, which focused exclusively on traditional governance issues, the 2016 and 2017 Task Force members interpreted their mandate for developing reform recommendations to extend beyond the singular matter of State Bar governance. They saw governance as inextricably linked to, and dependent upon, the structure and operations of the State Bar as an organization. To be effective, organizational design must address all three. Yet good organizational design, standing alone, is not sufficient to create lasting change. Rather, a continuing commitment of Board and staff leadership to reform is critical.



With these ideas in mind, the 2016 Task Force Report highlighted nine reform issues for attention:

1. Perception and Reality of an Ineffectively Managed Discipline System.
2. Inadequate Definitions of the Bar's Public Protection Mission.
3. Proliferation of Activities: Lack of Organizational Coherence leading to 'Mission Creep.'
4. A Conflicting Hybrid Governance Structure.
5. Confused Reporting Relations Hindering Accountability.
6. Proliferation of Committees, Boards and Commissions and Over Reliance on Volunteers.
7. Restricted Separate Funding Sources, Creating Cultural and Procedural Obstacles to Financial and Organizational Management.
8. Inadequate Development and Support for Human Resources.
9. Inadequate Resources to Satisfy Statutory Backlog Definitions.

A unifying theme behind many of the foregoing concerns was the need to develop a 'single enterprise' approach to managing all State Bar functions in order to address structural and operational confusion. The Board of Trustees agreed and directed that a single set of administrative rules and procedures, appropriate for a regulatory body, be applied to all State Bar functions in the future. This has produced a more coherent operational model and will improve the State Bar's overall function and ability to support its core public protection functions.

Although not an explicit recommendation in the 2016 Task Force Report, implementation of a single enterprise approach to managing the State Bar has provided an additional rationale for the most significant structural reform in the State Bar's ninety year history: the proposed separation of its 16 Sections as contemplated in Senate Bill 36 (the 2018 fee bill). As the 2016 Task Force Report made clear, the current structure combining two distinct organizational and operational designs has posed a continuing problem for effective management of the State Bar. Correcting this problem will move the State Bar forward in achieving a more efficient, centrally managed organization.

Discussion of the possible Sections' departure coincided with the beginning of the 2017 Task Force work and thus became an important consideration in its deliberations. Equally important, earlier fee bill proposals to reduce the size of the State Bar's Board of Trustees by eliminating six elected trustee positions moved closer to reality with the introduction of the 2018 fee bill. Together these two potential structural changes motivated the 2017 Task Force work, creating greater urgency to design a 'new' State Bar of California.

The 2017 Task Force began its work by developing an agenda around three themes, designed to capture work remaining from the 2016 Task Force Report and to consider the needs of the organization if the Legislature were to approve the departure of the Sections and significantly reduce the size of the Board. The first theme entailed creating a mission statement that would define the State Bar's public protection responsibilities. A working mission statement was drafted early in the process, but not finalized until the last meeting to ensure that the Task Force's mission statement recommendation captured the most well-developed thinking about the State Bar's purpose and function. That process produced the following mission statement, which the 2017 Task Force recommends for the Board's consideration:

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The State Bar of California's mission is to protect the public and includes the primary functions of licensing, regulation and discipline of attorneys; the advancement of the ethical and competent practice of law; and the promotion of efforts for greater access to, and inclusion in, the legal system.

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In discussing its second topic – Board governance changes – the 2017 Task Force was mindful of proposals contained in the unsuccessful 2017 fee bills, as well as recommendations made in the 2016 Task Force Report. In the end, its recommendations largely track those now introduced in the 2018 fee bill. Accordingly, the 2017 Task Force embraced renaming the Board leadership positions as Chair and Vice Chair, with appointment by the Supreme Court; eliminating trustee elections; and, extending trustee terms of office to four years. Additionally, the 2017 Task Force recommended that the Board be reduced in size to 17 members, converting four formerly elected positions to appointments by the Supreme Court, both Legislative Houses and the Governor; that consideration be given to a mechanism for appointing vacancies left open overlong; and that the position of Treasurer, a vestige of the State Bar's associational structure, be eliminated.

Discussion about the third 2017 Task Force topic, the role of sub-entities and volunteers, and the structure of Board Committees, created special demands. The 2017 Task Force recognized that to understand the changes needed to correct past problems and ensure that the 'new' State Bar is structured successfully in light of both the possible departure of the Sections and a significant change in Board size, a deep review of all of the State Bar's functional areas would be needed. The 2017 Task Force was clear that a smaller governing board would inevitably face significant challenges, thanks to the State Bar's great size, complexity and functional diversity. Thus understanding the State Bar's complicated structure became an important focus.

In its review process, the 2017 Task Force learned that the State Bar of California is the world's largest 'unified' bar, combining both regulatory and membership functions, and has a highly unusual structure when compared to other sister bar organizations. Unlike other bar



organizations, the State Bar operates with a completely professionalized discipline system, the chief prosecutor of which reports directly to a committee of the governing board, rather than the chief executive officer; is subject to an oversight structure governed jointly by the Supreme Court and both Legislative Houses; and is responsible for a comprehensive set of licensing, regulation, discipline and educational activities, many contained in a growing body of statutory directives.

The 2017 Task Force recognized the importance of identifying ways to improve the oversight and management of the State Bar. Its functional review of all State Bar operational areas made clear that the State Bar historically has been asked to do far more than manage its core responsibilities of attorney discipline, licensing and regulation alone. The resulting organizational structure and management systems have become unusually complex as new responsibilities have been added over time. Similarly the State Bar's fund accounting financial system, which has not been upgraded in years, has strained to accommodate mushrooming programmatic activity and statutory requirements. To manage its growing number of activities, without adding resources, the Bar has relied on an increasing number of volunteers operating through sub-entities.

Efforts to address this problem of organizational sprawl and entropy were set in motion by recommendations in the 2016 Task Force Report. They are expected to result in a significant reduction in both sub-entities and Board appointed volunteers even before implementation of the 2017 Task Force Report recommendations. In 2011-2012, there were 46 mainly Board-created sub-entities operating within the State Bar under the Board's direct oversight, supported by approximately 700 volunteers. Implementation of the 2016 Task Force Report recommendations, designed to address the identified problem of a proliferation of committees, now along with the possible departure of the Sections, will reduce the number of sub-entities operating within the State Bar under the Board's direct oversight to 12, and the number of associated volunteers to approximately 200. This reduction in sub-entities and volunteers will create a more manageable oversight workload for the Board and a stronger organizational structure.

Even so, more remains to be done, including further study of a broad range of advisory committees to the sub-entities and their additional use of volunteers. The 2017 Task Force Report has made an important contribution to this work by providing a detailed analysis of the various sub-entities and identifying those which should be prioritized for future study by the Board and its Committees. These include the *Committee of Bar Examiners*, *Law School Council*, *California Board of Legal Specialization*, *Client Security Fund*, *Committee on Mandatory Fee Arbitration*, *Lawyer Assistance Program Oversight Committee*, *Access to Justice and Diversity Related Sub-Entities*, and the *Committee on Professional Liability Insurance*. In sum, the 2017 Task Force has laid the groundwork for the Board to continue this review effort and, taking advantage of a revised Board Committee structure, 'right-size' the work of these volunteers and sub-entities, so that appropriate Board oversight and control become a reality.

Finally, the 2017 Task Force noted that for maximum effectiveness, the State Bar's management structure should be aligned with Board Committee structure, so that the Board can effectively exercise its oversight responsibility. The Task Force also determined that the Board should engage in ongoing continuous improvement assessment and review. Recommendations to improve trustee training and incorporate leadership development, succession planning and management structure review into the Board Committee work plan were developed to advance these principles. This work, which will require the joint effort of Board and senior management, was noted as most appropriate for the Executive Committee (ExCom). With this recommendation, the 2017 Task Force Report joins the 2016 Report in underscoring the need to develop the most important asset of the State Bar of California: its human resources. To navigate the way forward will require continued attention to maintaining reform-minded leadership at the Board and senior management level, as noted in both the 2016 and 2017 Task Force Reports.



## INTRODUCTION

This third Task Force Report builds on two earlier Task Force Reports (2011 and 2016) and occurs at a time of transformational change for the State Bar of California.<sup>1</sup> The possible departure of the State Bar Sections, reflected in the 2018 fee bill, creates a new opportunity for the Bar to reinforce its commitment to core public protection functions, pursuant to its statutory mandate. With this in mind, the 2017 Task Force<sup>2</sup> focused not only on governance, but also on the interrelated operations and structural reforms that ultimately will be necessary to effectuate comprehensive organizational change.

The State Bar and its component parts should operate as a single enterprise reflecting good governance, structural alignment and operational coherence. Only if this is done can the Board execute its oversight role, establishing measureable goals and objectives against which resource decisions can be made effectively. The Task Force believes that this critically-timed self-examination process, along with ongoing restructuring efforts, will produce a ‘new’ State Bar, acutely focused on public protection through its advisory responsibility for admissions and discipline, and its other regulatory functions.

This 2017 Task Force Report is divided into four main sections: Background, Summary of 2017 Recommendations, Discussion, and Conclusion. The Background section provides the factual context for the work of the 2017 Task Force, noting its relationship to earlier reports and the impact of developments that unfolded during the life of the Task Force. The Discussion section provides the context for understanding how the recommendations were reached. By highlighting discussion themes from the Task Force meetings and the principal considerations that factored into developing Task Force recommendations, the Discussion section summarizes the work that provided the foundation for this Report and its recommendations. The Conclusion offers recommendations on the way forward, taking advantage of recommendations contained in the 2017 Task Force and a series of related reports.

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<sup>1</sup> See Appendix A, Governance in the Public Interest Task Force: Statutory Directive.

<sup>2</sup> See Appendix B, Governance in the Public Interest Task Force: Composition.

## BACKGROUND<sup>3</sup>

### THE 2016 TASK FORCE REPORT<sup>4</sup>

Noting the dependent interrelationship of operations, structure and governance, the 2016 Task Force focused on a broad range of issues in developing its recommendations. The 2016 Task Force Report identifies both significant governance concerns, such as unclear reporting relationships and the lack of a definition for public protection, and the accountability and operational challenges that derive from those concerns. The 2016 Task Force Report specifically identified the following nine problems in need of correction:

1. Perception and Reality of an Ineffectively Managed Discipline System.
2. Inadequate Definitions of the Bar's Public Protection Mission.
3. Proliferation of Activities: Lack of Organizational Coherence leading to 'Mission Creep.'
4. A Conflicting Hybrid Governance Structure.
5. Confused Reporting Relations Hindering Accountability.
6. Proliferation of Committees, Boards and Commissions and Over Reliance on Volunteers.
7. Restricted Separate Funding Sources, Creating Cultural and Procedural Obstacles to Financial and Organizational Management.
8. Inadequate Development and Support for Human Resources.
9. Inadequate Resources to Satisfy Statutory Backlog Definitions.

To address these problems, the 2016 Task Force considered recommendations in the areas of governance reform and de-unification; two Task Force members wrote a minority report supporting de-unification, i.e., uncoupling of regulatory and trade association functions. The 2016 Task Force also identified additional topics needing further study. Regarding governance reform, the following proposals received majority support:<sup>5</sup>

- Establishment of an officer ladder.
- Increase in the number of public members while maintaining a majority of attorneys.
- Elimination of trustee elections.
- Appointment of a limited-term enforcement monitor.

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<sup>3</sup> For pre-2016 history of the Task Force, see Appendix C, Governance in the Public Interest Task Force: History.

<sup>4</sup> This report was due on May 15, 2014, but was not submitted until August 2016 because of circumstances beyond the control of the current Board and executive staff.

<sup>5</sup> A proposal to extend the length of the president's term received no support. It was thought that the creation of an officer ladder would provide the necessary continuity.



- Enhanced trustee orientation and training.
- Assessment of Chief Trial Counsel reporting relationships.

Topics identified for further study receiving majority or full support included:

- Clarify meaning of public protection.
- Review committee framework and structure.
- Reduce Board size.
- Address impacts of silo funding, i.e., whether to apply the same fiscal policies to all State Bar activities *regardless of funding source*.
- Study funding adequacy for discipline functions.

#### **IMPLEMENTATION OF RECOMMENDATIONS FROM THE 2016 TASK FORCE REPORT**

Some, mainly governance related, 2016 Task Force Report recommendations required statutory changes in the State Bar Act. The 2016 Task Force identified for immediate action by the Board of Trustees recommendations that required no legislation or further deliberation. The 2017 Task Force took up issues identified in the 2016 Task Force Report that remained unresolved. The section below describes the status of the non-legislative recommendations of the 2016 Task Force Report, summarizing steps that have already been taken by the Board and State Bar staff to implement the recommendations, noting as well work undertaken by the 2017 Task Force in areas requiring further review.

*Address Impact of Silo Funding, i.e., whether to apply the same fiscal policies to all funds received regardless of source:*

- The 2016 Task Force Report identified the need for a single enterprise approach to State Bar fiscal and administrative policy, so that all such matters would be governed centrally in a manner more appropriate for a governmental entity. The Board has embraced this ‘single’ system approach.
- On September 12, 2016, the Board took the initial step of prohibiting any State Bar spending on alcohol, no matter the funding source, and referred development of additional policies for meals, awards purchases, entertainment, lodging and sponsorship to the Board’s Stakeholders, Access to Justice and Appointments (SA&A) Committee for report back to the Board at its January 26, 2017, meeting. At that meeting, a new policy restricting alcohol spending was adopted.
- On October 2, 2016, the Board voted to cancel hotel contracts designed for future annual meetings as inconsistent with the fiscal role and responsibilities of a regulatory

agency. Future annual meetings will occur as part of the normal Board meeting cycle and will be held at State Bar offices.

- On January 26, 2017, to align with state law requirements, the Board revised the executive rules governing housing allowances and relocation expenses for managerial employees and eliminated all additional exceptions to its standard fiscal policies, including expenditures on alcohol and resort style hotels, as well as third party sponsorships of such activities.<sup>6</sup>
- On March 9, 2017, the Board addressed the question of whether to go forward with the State Bar's 25 annual awards programs in 2017 given current fiscal constraints. Of the 25 programs, the Board made no changes with respect to 17 managed and funded by the Sections, or to the Jack Berman Award sponsored by the *California Young Lawyers Association*. The Sections and the *California Young Lawyers Association* will be responsible for these awards programs in 2017 as well as prospectively, assuming the Legislature approves their transition to a new independent entity. The Board suspended participation in the remaining awards programs temporarily until full funding of the State Bar is restored.
- The 2017 Task Force has not identified the need for any additional fiscal policy modifications as of now and believes that this item has been addressed successfully. New concerns, if any should arise, will be referred to the appropriate Board Committee.

#### *Assessment of Chief Trial Counsel Reporting Relationships:*

- By statute, the Chief Trial Counsel reports to the Board's Regulation and Discipline (RAD) Committee. The Board Book<sup>7</sup> recognizes this legislative assignment of oversight responsibility and, at the same time, provides that the Chief Trial Counsel respond to the Executive Director on administrative matters. The issue is whether this dual reporting relationship provides for an appropriate level of oversight and accountability for the Chief Trial Counsel to the Board Committee.
- On September 12, 2016, the Board voted to refer this issue to the RAD Committee for a report back to the Board at its January 26, 2017, meeting.

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<sup>6</sup> Measures implemented by administrative action include adoption of state reimbursement rates for lodging; approval by the Executive Director of any off-site meetings; and the capping of on-site catering costs. Caps for off-site catering costs are being developed.

<sup>7</sup> The Board Book is the Board's Policy Manual, which was adopted in September 2004 and is revised periodically. It is a compilation of legal authorities and policies that govern the operations of the Board and its oversight of the State Bar.



- At the January 26, 2017, meeting, the Board discussed the issue and determined that no changes were needed to the existing framework because the dual reporting relationship is thought to be a necessary means for effective management within the existing statutory scheme.
- The 2017 Task Force declined to address this, and other similar issues involving reporting relationships of key senior management staff, further. The 2017 Task Force believes that this discussion is more appropriate for the Board. Nonetheless, the 2017 Task Force notes that establishing an ethos and system of accountability will require the right organizational design.

*Appointment of a Limited-Term Enforcement Monitor:*

- After the Legislature did not pass a fee bill in 2016 for funding the State Bar in 2017, the Chief Justice of California, by letter dated September 8, 2016, directed the State Bar to request an interim special regulatory assessment to fund the disciplinary system.
- In response to the State Bar's request, the November 17, 2016, Supreme Court order approved an interim assessment, but denied funding for an enforcement monitor, citing the significant amount of change the discipline system would undergo in 2017, including transitioning to new workforce configurations and a new Chief Trial Counsel.
- In light of the Court's order, the 2017 Task Force made no further recommendations for an enforcement monitor.

*Study Adequacy of Funding for Discipline Function:*

- On September 12, 2016, the Board voted to refer this item to the Board's Planning & Budget (P&B) Committee, requiring progress reports at future meetings.
- On January 16, 2017, the ExCom preliminarily approved the 2017 budget, subsequently confirmed and adopted by the entire Board on January 26, 2017, with technical amendments. This 2017 budget increases funding for the discipline function by over \$3.4 million as compared to the 2016 budget, more than double the increase directed by the 2017 Court-assessed level. This one-time increase is seen as critical to the successful implementation of the workforce planning redesign and backlog reduction efforts for the discipline system.
- The 2017 Task Force recognizes that the fiscal needs of the discipline system must be a permanent and ongoing topic for the Board; it should be an important consideration in all future budget adoption and modification processes. The need for such attention will be particularly important in the development of the Bar's 2018 budget if certain

provisions contained in the 2018 fee bill come to pass; specifically, the anticipated redirection of some insurance and affinity program revenues to support the new Sections entity will result in decreased funding available for the Bar's discipline system.

*Enhanced Trustee Orientation and Training:*

- On September 12, 2016, the Board voted to establish enhanced orientation and training for new trustees.
- At the November 16, 2016, Board meeting, a new orientation program was introduced.
- The 2017 Task Force believes that more work is required to fully implement this recommendation, especially the development of special training to understand the State Bar's unusually complex financial system; the 2017 Task Force therefore recommends further changes in the new trustee orientation program and ongoing trustee training, discussed below.

*Board Governance:*

- On September 12, 2016, in response to the 2016 Task Force Report, the Board voted to make the following changes in its governance procedures:
  - The Vice President will chair the RAD Committee;
  - The Vice President and Treasurer will oversee the annual strategic planning session;
  - The Treasurer will chair the P&B Committee; and
  - Both the P&B Committee and the Audit Committee will be retained, contrary to the recommendation in the 2016 Task Force Report, because the Board concluded that it was preferable for oversight purposes to keep the State Bar's finance and audit functions separate as a further 'check and balance.'
- The 2017 Task Force recommends further changes in Board governance, discussed below, to improve the functioning of the Board in the performance of its oversight role.



### *Proliferation of Sub-Entities:*

- If approved by the Legislature, departure of the 16 Sections and the *California Young Lawyers Association* from the State Bar, as described in Senate Bill 36, along with ongoing Board-directed restructuring of State Bar sub-entities, would produce significant changes to the operational structure of the State Bar. Such a change will make even more important the need to reform an unwieldy organizational structure. Fortunately, important reforms have already occurred.
- In 2011-2012, there were 46,<sup>8</sup> mainly Board-created,<sup>9</sup> sub-entities operating within the State Bar under the Board's direct oversight, supported by approximately 700 volunteers.<sup>10</sup> Implementation of the 2016 Task Force Report recommendations designed to address the identified problem of a proliferation of committees has already had a significant positive impact on the State Bar. By the end of 2017, there will be 29, rather than 46, sub-entities operating within the State Bar under the Board's direct oversight, with no corresponding decrease in program coverage or responsibilities.<sup>11</sup> This reduction in sub-entities and volunteers will create a more manageable oversight workload for the Board and a stronger organizational structure. This change also offers a good example of the interaction of governance and operations, demonstrating how changes in one area can improve overall organizational performance.
- If departure of the Sections and the *California Young Lawyers Association* is approved, the number of sub-entities operating within the State Bar under the Board's direct oversight will be reduced further from 29 to 12.<sup>12</sup> And the number of volunteers on sub-entities operating within the State Bar under the Board's direct oversight will be reduced to approximately 200. Although the State Bar wants to continue benefiting from the dedication, commitment, expertise and experience of its volunteers, the

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<sup>8</sup> This count does not include the *Commission for Revision of Rules of Professional Conduct*, which is a temporarily created sub-entity that recently completed the majority of its work to overhaul the rules, submitting them to the Supreme Court for approval on March 31, 2017. It also does not include the *Law School Council*, which functions as an advisory body to the *Committee on Bar Examiners*.

<sup>9</sup> Though most sub-entities were created by resolution of the Board of Trustees, some are legislative creations, such as the *Lawyer Assistance Program Oversight Committee* and the *Commission on Judicial Nominees Evaluation*.

<sup>10</sup> The sub-entity and volunteer counts do not include secondary levels of advisory bodies or subcommittees created by the sub-entities themselves.

<sup>11</sup> This reduction will be accomplished by transferring appointment authority for the *California Board of Legal Specialization* advisory commissions from the Board of Trustees to the *California Board of Legal Specialization*, transferring responsibility for the four non-governing standing committees to the Litigation Section, eliminating the *Committee on Group Insurance*, and merging the *Committee on Delivery of Legal Services* with the *California Commission on Access to Justice*.

<sup>12</sup> See Appendix D, Reduction in Sub-Entities.

reduction in the number of sub-entities and volunteers will improve operational coherence and cohesion to support the State Bar's public protection function, and address a significant problem identified in the 2016 Task Force Report.

- To some extent these changes are also expected to reduce administrative resources and costs necessary for the State Bar's support of volunteer activities, e.g., fewer meetings, expense reimbursements and catering costs.
- The 2017 Task Force recommends further study of the remaining sub-entities, discussed below; this work will build upon similar efforts taken pursuant to the 2016 Task Force Report. In sum, the goal of the 'new' State Bar is to be a centrally-managed and administratively coherent enterprise, focused on its public protection mission.

#### **DEVELOPMENT OF AN AGENDA FOR THE 2017 TASK FORCE**

The 2017 Task Force discussions necessarily operated within three constraints: time limitations, legislative developments, and the legislatively proposed departure of the 16 Sections and the *California Young Lawyers Association* from the State Bar.

First, because the last Task Force report was issued in August 2016, rather than in 2014 as contemplated by the statutory scheme, the 2017 Task Force was challenged by the brief eight months available for its work. It thus decided to build on and complete the work of the 2016 Task Force. To do so, it identified three main areas left unresolved by the 2016 Task Force Report, noted in the section above and described more fully below.

Second, the 2016 Task Force Report was issued at the end of the 2015-2016 legislative session. Although a fee bill was not passed, the bills introduced by each Legislative House contained areas of agreement, some of which were embraced by the Supreme Court as well and also considered by the 2016 Task Force. The 2017 Task Force has worked to factor these areas of agreement into its own recommendations.

Finally, as the 2017 Task Force started its work, a variety of changes, either legislatively-mandated or the result of steps taken to implement recommendations pursuant to the 2016 Task Force Report, began to impact the functioning of the 16 volunteer Sections. As separation appeared more likely, the 2017 Task Force confronted how a State Bar without its traditional associational aspects (e.g., providing legal education in substantive areas of law, advocating for changes in the law and advancing the interests of its members) might function. While the traditional associational functions performed by the Sections are of longstanding, critical value to the legal profession, many argued that they could be performed as effectively, if not more so, outside the evolving regulatory framework of the State Bar. Meanwhile, the State Bar continued to emphasize its responsibilities as a governmental entity, with a variety of self-imposed fiscal policy modifications, together with the imposition of legislatively-mandated open meeting and



public records disclosure requirements. It increasingly became clear that separation of the Sections could serve a dual objective: (1) allow the Sections to operate unencumbered by the constraints necessary for a governmental entity; and (2) improve the State Bar's focus on its regulatory public protection mission. The idea of separating the Sections from the State Bar has now been clarified in the proposed California Bar Sections Association Act, contained in the 2018 fee bill.

These developments provided the context for the first Task Force meeting on December 12, 2016, which focused on setting an agenda. The 2016 Task Force Report emphasized the interdependence of governance, structure and operations. The 2017 Task Force acknowledged this relationship and invited an expert in organizational design to present relevant design principles and models. This enhanced understanding allowed the 2017 Task Force to directly address the critical issues that underlie any strategic redesign process, including defining core organizational purposes and mission, as well as performance requirements, metrics and desired outcomes.

The Task Force agenda created at this initial meeting was informed by unresolved items from the 2016 Task Force Report and framed around three themes:

**Topic A:** Clarify the State Bar's public protection directive in developing a new mission statement for the State Bar, taking into account how the organization will be impacted by the possible separation of the State Bar Sections.

**Topic B:** Review Board structure, composition, size and term of office (e.g., public members, elected members, extended officer terms) for better performance and functioning.

**Topic C:** Examine the role of various sub-entities (e.g., committees and volunteers) and their relationship to the State Bar, along with how the Board's own Committees should be structured for improved performance and functioning.

These themes were the focus of the 2017 Task Force's subsequent six in-person meetings and one telephonic meeting.<sup>13</sup> Public comment in oral and written form was also received at several Task Force meetings.<sup>14</sup>

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<sup>13</sup> The Task Force's meetings rotated between Los Angeles and San Francisco, as follows:

- December 12, 2016: Overview & Setting the Agenda
- January 17, 2017: Topic A – The Mission Statement
- February 9, 2017: Topic B – Structure and Functioning of the Board of Trustees
- March 8, 2016: Topic C – Structure and Functioning of the State Bar Sub-Entities and Board Committees
- April 10, 2017: Identification of Open Items (telephonic meeting)
- April 24, 2017: Resolution and Finalization of Open Items
- May 12, 2017: Final Task Force Meeting

<sup>14</sup> See Appendix E, Public Comment.

Recognizing the importance of governance to the work of the Board of Trustees in meeting its statutorily mandated strategic planning responsibilities, the 2017 Task Force concluded that it would be useful if the Board were kept apprised of Task Force discussions as they proceeded. This approach was designed to allow the Board to take advantage of Task Force ideas at the earliest opportunity, possibly using them to enhance the 2017-2022 Five-Year Strategic Plan,<sup>15</sup> which was statutorily required to be submitted in February 2017. These Task Force briefings occurred at the January, March, and May 2017 Board meetings.

## **RECOMMENDATIONS OF THE 2017 TASK FORCE<sup>16</sup>**

The 2017 Task Force recommendations are summarized below. A more detailed description of the thinking supporting each appears in the Discussion section that follows.

### **TOPIC A – THE STATE BAR MISSION STATEMENT**

*Recommendation A.1: The Board of Trustees should consider adopting the following mission statement and employing it consistently across all State Bar programs for greater organizational consistency and coherence:<sup>17</sup>*

The State Bar of California’s mission is to protect the public and includes the primary functions of licensing, regulation and discipline of attorneys; the advancement of the ethical and competent practice of law; and the promotion of efforts for greater access to, and inclusion in, the legal system.

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<sup>15</sup> Business and Professions Code section 6001.2, subdivision (c), states the Task Force “shall make suggestions to the board of trustees regarding possible additions to, or revisions of, the strategic plan required by Section 6140.12.” Pursuant to this statutory directive, the 2017 Task Force shared its work in progress with the full Board at the January 26, 2017, strategic planning session. See Appendix F, The State Bar of California 2017-2022 Five-Year Strategic Plan. It is contemplated that the 2017-2022 Five-Year Strategic Plan will be revisited once the Task Force work concludes for consideration of the Task Force’s final recommendations.

<sup>16</sup> Unless otherwise noted, the recommendations of the 2017 Task Force were adopted by unanimous consent.

<sup>17</sup> Recommendation A was adopted by unanimous consent with the exception of one Task Force member, who objected to including the word “competent” in the mission statement, arguing that it is more closely associated with the function of the Sections in providing education and training to attorneys in substantive areas of law.



## TOPIC B – THE STRUCTURE AND FUNCTIONING OF THE BOARD OF TRUSTEES

*Recommendation B.1: Revise provisions of the State Bar Act relating to the size and composition of the Board of Trustees as follows:*

1. Eliminate trustee elections, effective January 1, 2018, allowing trustees already seated to complete their terms.
2. Reduce the size of the Board of Trustees to 17.
3. Replace four of the six eliminated elected trustees with one trustee appointed by each of the four appointing authorities, the Supreme Court, Governor, Speaker of the Assembly, and Senate Rules Committee.
4. Create four-year, staggered terms for trustees, beginning with current trustees.<sup>18</sup>
5. Develop various approaches to address the issue of trustee positions that are left vacant for extended periods, including hold-over appointments and filling of vacancies by the Chief Justice.
6. Change the title of President to Chair, and the title of Vice President to Vice Chair.
7. Eliminate the Treasurer as an officer of the Board of Trustees, or authorize both the Treasurer and Secretary positions to be filled by individuals, i.e., staff, not on the Board of Trustees.
8. Place responsibility for selection of the officer positions of Chair and Vice Chair with the Supreme Court, underscoring the importance of creating opportunities for leadership development and stability, e.g., through reappointment of the Chair, if appropriate, or a two-year leadership ladder,<sup>19</sup> assuming compatibility with the Court's own determination about Board leadership needs.

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<sup>18</sup> One Task Force member took the position that the three-year terms for current elected attorney trustees should not be lengthened to four years.

<sup>19</sup> The 2017 Task Force took up the topic of Board governance before Senate Bill 36 was released. Assuming the Supreme Court appointment method of officer selection as proposed in the 2018 fee bill reflects an approach agreed to by the Legislature and the Chief Justice, the 2017 Task Force offers its support. During the Board governance discussion, however, the Task Force had arrived at a different recommendation. Originally, the Task Force had recommended that a two-year leadership ladder be established whereby the Chair and Vice Chair would be selected in the first year; in the second year, the Vice Chair would assume the position of Chair upon completion of the Chair's term of office; each year thereafter, only a Vice Chair would be selected. Although a two-year leadership ladder had full Task Force support, the Task Force could not agree on a method of officer selection. Task Force members were split as to whether to recommend maintaining the status quo, i.e., self-nomination and election by the full Board of Trustees, or an appointment process by the Supreme Court or otherwise. Despite differences over the method of officer selection, all Task Force members agreed on the importance of leadership development and stability, which underlies their original recommendation for a two-year leadership ladder. At the same time, the Task Force acknowledges the discretion the Supreme Court will need to exercise to make its own determination regarding the leadership needs of the Board.

*Recommendation B.2: The Board of Trustees should adopt a new trustee orientation program;<sup>20</sup> develop an Admissions Day similar in purpose to Discipline Day; establish a formal mentoring program for new trustees; incorporate an educational component into each Board meeting; and create a training and orientation calendar to ensure that each incoming group of trustees receives timely training on all significant aspects of the Bar and its functioning.*

*Recommendation B.3: The Board of Trustees should adopt a trustee skills matrix to highlight the Board of Trustees' existing expertise as well as any talent deficits to assist both the Board itself and appointing authorities in trustee and officer selection and development.<sup>21</sup>*

## **TOPIC C – THE STRUCTURE AND FUNCTIONING OF THE STATE BAR SUB-ENTITIES AND BOARD COMMITTEES**

Topic C includes two categories: State Bar sub-entities, made up of Board members, appointees and volunteers, and variously created by Board action alone or in combination with external stakeholders, whether by Court rule or statute; and Board Committees, composed exclusively of trustees. For purposes of this Report, we have divided Topic C into two parts, C.1, State Bar Sub-Entity Structure and Functioning, and C.2, Board Committee Structure and Functioning. The related recommendations follow this organization.

*Recommendation C.1(a): The Board of Trustees, either as a body or by referral to Board Committees for initial analysis and study, should consider the following questions about the role and structure of all State Bar sub-entities to ensure that:*

1. The Board understands what each sub-entity does;
2. The Board has the information it needs to oversee properly and evaluate adequately the effectiveness of each sub-entity's function; and
3. The Board focuses the sub-entities on their policy-making role, segregating out administrative work for delegation to staff.

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<sup>20</sup> See Appendix G, New Trustee Orientation Training Modules.

<sup>21</sup> See Appendix H-1, Draft Trustee Skills Matrix. See also Appendix H-2, Trustee Skills Inventory Survey.



*Recommendation C.1(b): Additional questions should be considered with respect to the following sub-entities, identified by the Task Force for further study.<sup>22</sup>*

#### COMMITTEE OF BAR EXAMINERS (CBE)

- Should CBE's relationship with the Board of Trustees be strengthened for more meaningful engagement, communication, and exchange of ideas?
- Should the law school accreditation function be reviewed, to consider the desirability and feasibility, including the impact on cost and staffing, of partnering with professional accreditation bodies to perform this function rather than CBE?
- Would it be desirable to increase CBE's opportunity for policy formulation and oversight activities, and what changes in staffing or operations would be needed to support this shift in focus?

#### LAW SCHOOL COUNCIL (COUNCIL)

- How could the Council's relationship with the State Bar become more effective as a means of communication on matters of shared concern (e.g., the bar examination, law school curriculum and education) between the State Bar and the legal academic community?
- Could a plan be developed to ensure that the Council is performing its role as effectively as possible?
- Should a structural realignment be created to bring the Council directly under the CBE, as an advisory body that it both appoints and oversees?

#### CALIFORNIA BOARD OF LEGAL SPECIALIZATION (CBLS)

- How should the legal specialization certification function be characterized best, as part of the State Bar's public protection mission because it contributes to improving the competence of attorneys in certain specialty areas and assisting the public in identifying attorneys in those fields; or, as an associational activity because legal specialization certification principally benefits attorneys in the marketing of their law practices, thus suggesting a closer alignment with the function of the 16 State Bar Sections?
- What is the optimal means for reviewing the legal specialization certification process and what entity should conduct that review, the CBLS itself, as is currently the case, or an independent body reporting to the Board of Trustees?

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<sup>22</sup> For more information on the recommendations relating to sub-entities, see Appendix I, Review of Sub-Entities: Background and Recommendations.

- Would best practice, judged against the approaches of other states, suggest that the State Bar's function should be limited to certifying entities meeting established standards to administer legal specialization certification programs rather than administering such a program directly; if so, is the best structure for performing this function through CBLS or delegation to State Bar staff?
- Given that Supreme Court Rule 9.35 requires only that the State Bar establish and administer a program for certifying legal specialists, could the legal specialization certification function be performed by State Bar staff with the assistance of consultants instead of by CBLS?

#### CLIENT SECURITY FUND COMMISSION (CSF)

- Should consideration be given to making the CSF Commission a subcommittee of the RAD Committee, to clarify both its reporting relationship and the Board's oversight responsibility?
- Would there be benefits in cost savings and performance, by bringing certain CSF Commission work in-house to be performed by staff?
- Could the CSF Commission be reduced in size if its workload were decreased and the Commission's structure realigned with its remaining responsibilities?

#### COMMITTEE ON MANDATORY FEE ARBITRATION (MFA)

- Is there a risk that some local voluntary bar associations may decide that they no longer have the resources to support the MFA process and, if so, what would be the impact on the State Bar and its staffing?
- Would there be a benefit to bringing in-house more of the Committee's administrative work, so as to free up the volunteers for more useful deployment of their subject matter expertise; if so, would a reduction in the size of the Committee be possible to realign its structure with its remaining responsibilities?

#### LAWYER ASSISTANCE PROGRAM (LAP) OVERSIGHT COMMITTEE

- Do the statutory prescriptions governing LAP hinder full integration of this program area into the State Bar and inhibit proper oversight by the Board of Trustees?
- Should the LAP program area be retained within the State Bar, or should consideration be given to repositioning the program outside the State Bar?
- Assuming the Board of Trustees and the Legislature determine that LAP should remain within the State Bar, what should be the relationship between the Board of



Trustees and the LAP Oversight Committee so that there is greater engagement by the Board of Trustees in this program area and more effective integration of LAP into the State Bar overall?

#### ACCESS TO JUSTICE AND DIVERSITY RELATED SUB-ENTITIES

- The Chief Justice has identified the *California Commission on Access to Justice* (CCAJ) as part of the State Bar’s non-disciplinary public protection function.<sup>23</sup> This has clarified the State Bar’s important role in supporting access to justice initiatives. The question remains as to how best to define the Board’s role in informing, supporting, and directing diversity/inclusion and access to justice work through the CCAJ (into which the *Committee on Delivery of Legal Services* has been merged), the *Legal Services Trust Fund Commission* and the *Council on Access and Fairness*.
- Should access to justice and diversity/inclusion goals and objectives be integrated into all aspect of the State Bar’s public protection programmatic work plans?

#### COMMITTEE ON PROFESSIONAL LIABILITY INSURANCE (COPLI)

- How should program supervision and oversight of the professional liability insurance program best be effectuated, i.e., by a committee or by State Bar staff, supported by expert consultants?

*Recommendation C.1(c): The secondary level of subcommittees and advisory bodies created by, and working under, the sub-entities themselves should also be surveyed, catalogued, and reviewed to ensure appropriate management of, and oversight over, all State Bar activities.*

*Recommendation C.2: In contrast to the questions about the sub-entities, which will require further study, the 2017 Task Force also reviewed the role and structure of Board Committees. The Task Force agreed that the Board Committee process could be improved by determining the categories of matters that should pass through committee before reaching the Board of Trustees and the categories of matters that should go directly to the Board without prior review. The Board should begin the process of integrating this principle into all aspects of Board work. In terms of Committee scope, structure and process, the Task Force recommended consideration of the following changes that can be made immediately:*

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<sup>23</sup> See Appendix J, Letter from Chief Justice re Interim Regulatory Assessment.

1. Adjust the role and structure Board Committees as illustrated on the following table:

	Committee	Changes to Role and Structure
<b>Retained</b>	Regulation and Discipline Committee	<ul style="list-style-type: none"> <li>Address problems posed by the RAD Committee’s current ‘committee of the whole’ structure, such as by creating two RAD sub-committees, one to address issues of administrative policy and the other to address operational issues.</li> </ul>
	Audit Committee	None
	Executive Committee	<ul style="list-style-type: none"> <li>Transfer responsibility for the appointment process from the SA&amp;A Committee to ExCom.</li> <li>Assign to ExCom responsibility for leadership development, talent management, succession planning, and an annual Board assessment process.</li> </ul>
<b>Newly Created</b>	Non-Disciplinary Program Committee <sup>24</sup>	<ul style="list-style-type: none"> <li>Assign responsibility for planning and oversight of all non-discipline program areas.</li> <li>Assign responsibility for all sub-entities and program areas formerly under the A&amp;E Committee and the SA&amp;A Committee.</li> </ul>
	Finance and Planning Committee	<ul style="list-style-type: none"> <li>Assign responsibility for budget oversight and review of financial statements.</li> <li>Assign responsibility for ongoing strategic planning processes.</li> </ul>
<b>Eliminated</b>	Planning and Budget Committee Admissions and Education Committee Stakeholder, Access to Justice and Appointments Committee	

- Eliminate the Board Liaison Policy and permit Committees to determine how best to interact with sub-entities under their respective oversight purview, including use of liaisons if appropriate.
- Review, update and revise Committee charters.
- Seek legislation to sunset the Governance in the Public Interest Task Force because governance review should be ongoing – not limited to three-year cycles – and should

<sup>24</sup> The title of this Board Committee may need to be modified, as not all Task Force members agreed it appropriately describes the critical oversight responsibilities to which it is assigned.



be integrated into statutorily mandated strategic and budget planning processes, as well as a new annual Board assessment process, to ensure a consolidated and coordinated approach to organizational self-review.<sup>25</sup>

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<sup>25</sup> There were differing views regarding where such a consolidated function should be placed. Some Task Force members preferred that it be placed with the new Finance and Planning Committee; others, concerned with workload balance among Board Committees, preferred that it be placed with ExCom. The 2017 Task Force believes that the Board will be in the best position to resolve this issue in its consideration of the 2017 Task Force recommendations regarding governance structure.

## DISCUSSION

### TOPIC A – DEVELOPMENT OF A NEW MISSION STATEMENT<sup>26</sup>

Development of a State Bar mission statement is inextricably linked to the task of defining public protection. Pursuant to the statutory scheme, public protection is the highest priority for the State Bar and the Board of Trustees in carrying out the State Bar’s licensing, regulatory and disciplinary functions. In declaring public protection to be the highest priority, the Legislature targeted no particular program area as outside the State Bar’s public protection mission, but rather critiqued a perceived approach to decision-making at all levels of the organization, both Board and staff, that placed the interests of attorneys above the interests of the public.

For this reason, defining ‘public protection’ is not simply an exercise in making categorical decisions regarding which program areas fall within the State Bar’s mission and which do not. Even the discipline system, which unequivocally serves the State Bar’s mission of public protection, must ensure the primacy of public protection at every level of decision-making. Whether the State Bar is engaged in its licensing, regulatory or disciplinary functions or any other State Bar activity, the protection of the public must be paramount.

Arriving at an understanding of public protection required consideration of broad conceptual ideas about the meaning of both public and protection in the specific context of the State Bar’s responsibilities. Public generally means people as a whole. Protection generally means preventing harm or injury. As applied in the State Bar context, public, in a narrow sense, might be seen to include only those members of the public who file State Bar complaints. By this definition of public, the only type of public protection that would be pursued by the State Bar is predominantly *reactive* public protection, i.e., the prosecution of unethical and incompetent attorneys. Such a narrow construction of public protection would lead to the conclusion that the State Bar’s only function should be discipline. It would omit important proactive efforts that could prevent harm, rather than simply react to it.

Public, in a broad sense, could refer to the public at large, i.e., the 39 million residents of the State of California. Such a broad construction would lead to the conclusion that the public as a whole would be served best by a variety of both disciplinary and non-disciplinary State Bar functions and activities.

The Task Force considered whether public protection could be determined by examining whether a State Bar program area, activity, or interest provides a direct benefit to the public or to attorneys. The premise of such an approach is that public protection is not served if the direct beneficiaries of State Bar activities are attorneys rather than members of the public. That

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<sup>26</sup> See Appendix K, History of the State Bar of California Mission Statement.



construct was considered, but ultimately rejected. Certain State Bar activities that provide a direct benefit to attorneys, such as running the Ethics Hotline or issuing advisory ethics opinions, also provide an important benefit, albeit indirectly, to the public. Significantly, a restrictive ‘direct benefit’ approach to defining public protection is not contemplated by the statutory scheme, which requires only that the protection of the public be paramount when “it is inconsistent with other interests sought to be promoted.” (Bus. & Prof. Code, § 6001.1.) Public protection is not inconsistent with, and in fact is promoted by, assisting attorneys in the ethical practice of law.

After discussion, the Task Force concluded that public protection should be construed broadly to encompass a variety of disciplinary and non-disciplinary program areas, activities and interests. The current initiatives to streamline State Bar functions, more effectively manage and oversee program areas, and create an operational system that more closely aligns with the Board’s governance structures will guard against unrestrained proliferation of State Bar pursuits, and ensure that the State Bar stays focused on its statutory directive.

The State Bar’s access to justice, inclusion and diversity program areas were the subject of much discussion during the Task Force’s exploration of the meaning of public protection and development of a new mission statement. Within the State Bar’s organizational framework, access to justice includes two main components: (1) management of grants to legal services organizations; and (2) policy and program development designed to increase access to justice for *all* Californians. The State Bar’s diversity work includes policy and program development and management designed to expand inclusion and participation in the legal system. Throughout this discussion, the Task Force took note that the State Bar’s public protection mission should necessarily include support of efforts to strengthen the underpinnings of the legal system itself. Supporting work to build a fair and inclusive legal system, to expand the pool of available legal resources, and to provide meaningful access to courts is fundamental to the non-discipline aspects of the State Bar’s public protection mission. In this way, access to justice may be seen as serving the highest of State Bar purposes.

In its discussions about the meaning of public protection, the 2017 Task Force was mindful of the State Bar’s unique status as part of the judicial branch of government. Created by the Legislature in 1927, the State Bar became a constitutional body under the judicial branch in 1966. The State Bar serves in an advisory or adjunct role to the Supreme Court. Attorneys are officers of the court, with professional duties owed to the legal system as a whole. The legislative scheme under which the State Bar operates, the State Bar Act, is broad in its regulatory scope and includes disciplinary public protection functions, such as the State Bar Court, as well as non-disciplinary public protection functions such as that performed by the Office of Legal Services in managing the distribution of grant monies to legal aid providers. While the State Bar serves a public protection directive similar to that of executive branch consumer protection agencies, the unique status of the State Bar as a judicial branch entity, and of attorneys as officers of the court

with special obligations to support the legal system,<sup>27</sup> require a mission statement that has a broader vision than the statutorily described functions of licensing, regulation and discipline.<sup>28</sup>

The Chief Justice too has made clear the importance of the State Bar's role in supporting a healthy judicial system:<sup>29</sup>

The court acknowledges the State Bar's highest priority is protection of the public, and that this objective may be achieved not only through its discipline system, but also through the State Bar's administration of these types of programs [Commission on Judicial Nominees Evaluation, the Center on Access to Justice and the California Commission on Access to Justice], which work to ensure the integrity and effective functioning of the legal system.

Thus it appears evident that the Supreme Court's decision not to fund the *Commission on Judicial Nominees Evaluation*, the Center on Access to Justice (a departmental unit within the State Bar) and the *California Commission on Access to Justice* in its order for an interim regulatory assessment was not based on a conclusion that these program areas are outside the scope of the State Bar's public protection charge. Instead the Court simply reserved the question whether it had the constitutional authority to order an assessment to fund non-disciplinary State Bar activities. Additionally, the Supreme Court has never questioned the Legislature's consistent enactment of annual fee bills funding both disciplinary and non-disciplinary State Bar activities through a mandatory dues assessment.<sup>30</sup>

Harmonizing all of the State Bar's duties and obligations is complex. Its actions are guided by statute and Supreme Court Rule, but its roles vary. It may function as governmental regulator, advisor to the Supreme Court, grants administrator, and developer and proponent of policies and programs to support the legal system. Thus, the 2017 Task Force concluded that the State Bar's mission encompasses a variety of disciplinary and non-disciplinary activities. Some State Bar activities serve a reactive public protection function, and others serve a proactive public protection function. Some provide a direct benefit to the public, and others provide important

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<sup>27</sup> One Task Force member strenuously objected to this statement, believing that this construct does not properly separate the State Bar as a regulatory body from those it regulates, i.e., licensees.

<sup>28</sup> Moreover, in creating the Task Force, the Legislature is presumed to have been aware of all the various functional program areas of the State Bar. Business and Professions Code section 6001.1 refers to public protection as the "highest," not the exclusive interest, of the State Bar.

<sup>29</sup> See Appendix J, Letter from Chief Justice re Interim Regulatory Assessment. In her letter, the Chief Justice refers to the *Commission on Judicial Nominees Evaluation*, the Center on Access to Justice (a departmental unit within the State Bar) and the *California Commission on Access to Justice* as examples of "non-discipline public protection functions" and "high priority, non-disciplinary activities."

<sup>30</sup> The United States Supreme Court held that the State Bar may constitutionally fund activities germane to regulating the legal profession and improving the quality of legal services out of the mandatory dues of all members. (*Keller v. State Bar of California* (1990) 496 U.S. 1, 13–14.)



indirect benefits to the public. Above all else, the task of developing a new mission statement for the State Bar reinforced the notion that the decision-making mindset at every level of the organization, and in every program area, must be focused on public protection as the overriding interest sought to be promoted. In sum, the State Bar's goal must be to serve the public, not lawyers, unless serving the latter contributes meaningfully to public protection.

The mission statement arrived at by the Task Force concisely embodies this complex dialogue/discussion/deliberation. With public protection at the helm, the statement refers to the main functions of the State Bar – licensing, regulation and discipline – as well as the critical value points that cut across every program area – ethics, access to justice and diversity. The 2017 Task Force decided that the mission statement should be broadly worded and visionary in tone, rather than an attempt to capture each specific activity or program under the State Bar's aegis. As important, the 2017 Task Force crafted the mission statement to be employed across *all* State Bar programs for greater organizational consistency and coherence. The Task Force believes that the mission statement will serve the State Bar well, and recommends its adoption by the Board of Trustees at the conclusion of the Task Force process:

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The State Bar of California's mission is to protect the public and includes the primary functions of licensing, regulation and discipline of attorneys; the advancement of the ethical and competent practice of law; and the promotion of efforts for greater access to, and inclusion in, the legal system.

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## **TOPIC B – THE STRUCTURE AND FUNCTIONING OF THE BOARD OF TRUSTEES**

The 2017 Task Force arrived at a comprehensive set of recommendations for improving the structure and functioning of the Board of Trustees. Initial discussion, reflecting differences of opinion, ultimately produced consensus on the main issues related to this topic. Subsequent to this effort, the Senate Judiciary Committee released its 2018 fee bill. The Task Force is pleased that the majority of its recommendations are consistent with the provisions in the 2018 fee bill, including the elimination of trustee elections,<sup>31</sup> reduction in the size of the Board, four-year

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<sup>31</sup> As discussed in the section of the report on Board Committees, the Task Force believes that a statutorily imposed three-year governance review requirement should be replaced by an ongoing governance review process, which would be integrated into the Board's statutorily mandated strategic planning and budget processes. If the current Task Force format is retained, it should, however, be noted that eliminating all elected trustees will also eliminate the two elected trustee positions on the Task Force, producing a five-member body.

trustee terms, and a change in title of the principal officers from President and Vice President to Chair and Vice Chair. The Task Force’s recommendations also include proposals that differ slightly from, or were unaddressed in, the 2018 fee bill. The following chart and discussion provides the context for those recommendations.

**Comparison of Governance Features: 2018 Fee Bill and Task Force Recommendations**

	<b>Current Fee Bill</b>	<b>Task Force Recommendations</b>
<b>Size of Board</b>	Reduce from 19 to 13 trustees	Reduce from 19 to 17 trustees
<b>Transition</b>	By expiration of terms	Same
<b>Trustee Elections</b>	Repeals	Same
<b>Trustee Term</b>	4 years instead of 3	Same
<b>Trustee Criteria</b>	None	Trustee Skills Matrix (non-legislative)
<b>Filling Vacancies</b>	As required by statute	Development of backup approaches, e.g., hold-over appointments, filling of vacancies by Chief Justice, etc.
<b>Officer Titles</b>	Changes President to Chair and Vice President to Vice Chair	Same
<b>Officer Selection</b>	By Supreme Court	Same, with consideration of importance of leadership development and stability
<b>Chair Term</b>	Reappointment option	Same
<b>Treasurer</b>	Retains but allows Board to select annually and need not be filled by a member of the State Bar	Repeal or allow position to be filled by non-Board member, i.e., staff

*Size of Board*

The Task Force examined the Board’s diverse and complex scope of oversight, planning, and policy work to make a determination regarding optimal Board size. The discussion focused on two issues: the size of the Board’s workload and the continuing problem of trustee vacancies. To populate the Board and its Committees adequately, the 2017 Task Force believes that the ideal Board size would be 17 trustees.

Elimination of the six elected trustee positions would theoretically result in a Board of 13. In fact, a smaller number might actually be the practical result, possibly with as few as 11 trustees, when current experience with trustee vacancies is considered. The Task Force believes that this size would challenge the Board’s ability to manage its large workload effectively.

Thus the Task Force preferred a 17-member Board, which could be achieved by converting four of the eliminated elected positions to appointments made by each of the four appointing



authorities – the Supreme Court, the Governor, the Speaker of the Assembly, and the Senate Rules Committee.

### *The Treasurer*

The Task Force concluded that the office of Treasurer is no longer needed. Typically, in a corporate or non-profit setting, a treasurer has custody of the funds, and is charged with overseeing the management and reporting of finances. The Board's position of Treasurer is perhaps a vestige from a time when the State Bar functioned in ways similar to a private association. Execution of such responsibilities for a governmental entity of the State Bar's size and complexity requires a high level of financial literacy, which may not always exist on the Board, especially on a Board of diminished size. Currently, fiscal management is performed by the State Bar's Chief Financial Officer working under the supervision of the Chief Operating Officer and Executive Director. The professionalization of the State Bar, particularly in fiscal matters, makes the position of Treasurer an obsolete redundancy. Moreover, the entire Board shoulders responsibility for financial oversight and accountability. As currently structured, oversight of the budget process is shared by the Board's P&B Committee and the Audit Committee. The resources of the Board in fiscal matters should be directed toward policy creation and oversight, not the day-to-day management of the State Bar's finances. Even if the 2017 Task Force's recommendation to eliminate the position of Treasurer is not adopted, Business and Professions Code section 6022 should be amended to provide that the position need not be filled by a member of the Board. That way, the individual whose paid job it is to perform the duties of a treasurer, i.e., the Chief Financial Officer, can fill the position.

### *Officer Selection and Leadership Ladder*

Leadership stability and continuity has long been a challenge for the State Bar. The current governance structure itself adds to this problem with its annual change in leadership, i.e., 'going through the chairs.' The cycle of yearly elections and leadership change disrupts momentum and continuity and weakens governance. It may also explain why for many years reforms proposed in a series of reports were not implemented. Each new leadership group focused on its own ideas, abandoning those of earlier groups.

Leadership selection has historically posed additional problems for the State Bar by creating factionalism among trustees and disruptive internal political strife. The 2017 Task Force examined ways to address this issue. It considered various methods of officer selection, including a nomination process by a committee resembling the Task Force structure; an automatic rotation process among Board members according to their appointing authority status; and a nominating committee controlled by the Chair.

Ultimately, the 2017 Task Force agreed that the structure now reflected in the 2018 fee bill, by which the Chief Justice will serve as the appointing authority for the Board Chair and Vice

Chair, reflects a preferable approach. Moreover, if the Board undertook an annual self-assessment designed to lead to the external selection of a Chair best suited to lead the Board in fulfilling the State Bar's public protection directive, concerns about a lack of detailed understanding of the Board's requirements by an external appointing authority could be ameliorated. Additionally, the 2017 Task Force acknowledged that it will be the responsibility of the Board and State Bar staff to keep the Chief Justice, through Court staff, reasonably informed of Board issues and actions. This will provide additional insight into the Board's leadership needs and contribute to an effective appointment process.

The Task Force believes that no matter the selection process, leadership development and stability is critical, although it can be achieved in different ways. One way is through reappointment. An additional way is through a two-year leadership ladder, described in footnote 19, whereby the Vice Chair automatically rotates into the Chair position. Such an approach both creates a pipeline of leadership prepared by experience to serve and enhances the opportunity for the orderly development of policy from one year to the next. The 2017 Task Force acknowledges that if the Supreme Court is to be the appointing authority, it must have the discretion to decide the best complement of leadership talent needed for the Board at any given time, without being tied to a prescriptive formula. Thus a 'soft leadership ladder' approach, one that assumes the Vice Chair will rotate into the Chair position, unless circumstances dictate a different choice, might offer the best solution.

#### *Board Vacancies*

Currently, the Board has four vacant seats. Any reduction in Board size, especially from 19 to 13 as proposed in the 2018 fee bill, will pose a challenge in its own right for accomplishing the oversight and policy work of the Board, which would be compounded if trustee positions were to remain unfilled over significant periods of time. The Task Force thus gave thought to ways in which this Board vacancy problem could be solved. Ideas considered focused on creating an alternate appointment process or a 'holdover term' process. If left unaddressed, the problem of Board vacancies, in combination with a reduction in Board size, will significantly reduce the capacity of the Board to manage its oversight and policy responsibilities. A mechanism is needed to fill vacancies that remain after a defined period.

#### *Trustee Orientation and Training*

Given the expected reduction in size of the Board, as well as the complex and diverse nature of the State Bar and its programs, the Task Force recognizes an even greater need for preparing trustees for their oversight and policy role at the earliest possible time. Both the timing and content of a new trustee orientation and ongoing trustee training program are important. To that end, the Task Force developed a set of three orientation modules to be delivered to new trustees at the beginning of their terms. See, Appendix G, New Trustee Orientation Training Modules. The modules offer an overview of the information essential for new trustees to have about the



State Bar, the Board, and the law governing trustee activities to enable them to competently perform in their new roles as soon as possible. In addition, the 2017 Task Force believes that new trustees should be assigned to more experienced trustees for mentorship. This guidance will help to orient new trustees to their roles on the Board.

Historically, trustee orientation includes attending Discipline Day, an important way to familiarize trustees about this core function of the State Bar. The Task Force recommends that the State Bar develop a parallel Admissions Day, similar in purpose to Discipline Day, to familiarize new trustees with the State Bar's critical licensing functions.

In addition to the onboarding orientation of new State Bar trustees, the Task Force also recommends that educational components be incorporated into each Board meeting to make education a continuous activity. By creating an 'information cycle' by which a series of topics would be included in Board meetings on a recurrent and regular basis, the Board will ensure that each incoming group of trustees is eventually briefed in depth on all significant functional areas of the Bar, rather than first learning about them in the context of a specific issue or concern.

### *Trustee Skills Matrix*

The Board needs a variety of talent to perform its oversight and policy functions successfully. Ideally, the Board's composition would include the right combination of talent in the form of education, expertise and experience necessary to shepherd the State Bar through recurrent issues it should anticipate in its yearly cycle of activities, as well as others that will arise from time to time. Additionally, demographic and geographic diversity on the Board is also critical to ensuring that a variety of perspectives and viewpoints guide the Board's decision-making process. In order to ensure both the talent and diversity needed for optimal functioning at the Board level, the Task Force recommends that the Board offer appointing authorities information about the composition of the Board for their consideration in recruiting and appointing trustees. To this end, a trustee skills inventory survey and skills matrix are being created, drawing upon the views of both trustees and stakeholders, which will allow the Board to provide appointing authorities with a rolling forecast of gaps in trustee experience and ability. See Appendix H-1, Draft Trustee Skills Matrix; and Appendix H-2, Trustee Skills Inventory Survey.

The Task Force recognizes that it is within the discretion and prerogative of the appointing authorities to make their own assessment of the Board's needs. This recommendation is intended only to offer helpful information. The criteria to be used in the matrix are a combination of the skills contained in the unsuccessful 2017 fee bills, the statutory criteria currently used by the Supreme Court's Trustee Nominating Committee, and additional factors identified by various stakeholders and Board members.

## TOPIC C.1 – STATE BAR SUB-ENTITY STRUCTURE AND FUNCTIONING

Topic C includes two categories: State Bar sub-entities, made up of Board members, appointees and volunteers, and variously created by Board action alone or in combination with external stakeholders, whether by Court rule or statute; and Board Committees, composed exclusively of trustees. We have divided the discussion below into C.1, State Bar Sub-Entity Structure and Functioning, and C.2, Board Committee Structure and Functioning.<sup>32</sup>

The sub-entities serve the State Bar’s various functional areas, e.g., admissions/licensing, discipline, access to justice/diversity, ethics, etc. Depending on the specific creating authority and sub-entity design and responsibility, questions may arise about: (a) appropriate Board oversight; (b) necessary and authorized fiscal and staffing support; (c) most effective structure for transparency and accountability; and (d) whether volunteer committees are optimal for implementing core State Bar responsibilities.

The goal of discussion on Task Force Topic C.1 was twofold. First, the Task Force identified possible policy and structural changes that might be needed to ensure that the State Bar achieves its statutory mandate in the licensing, regulation and discipline of attorneys. Second, each sub-entity was reviewed to ensure that it is appropriately structured with defined outcome measures, adequate oversight, and fiscal and staffing support.

An important recommendation of the 2016 Task Force Report was the need to streamline an organizational structure characterized by a decentralized administrative system with overdependence on volunteers, complicating effective Board oversight. The review of the 2016 Task Force noted this concern and put in motion a series of implementation activities that will result in a reduction in the number of sub-entities operating within the State Bar under the Board’s direct oversight, and associated volunteers, by the end of 2017. The departure of the 16 State Bar Sections and the *California Young Lawyers Association*, as contemplated in the 2018 fee bill, will achieve yet a further reduction, so that the 46 sub-entities operating within the State Bar under the Board’s direct oversight in 2011 will be reduced to 12. The Bar’s corresponding volunteer count will drop from approximately 700 to 200. Even so, ongoing review of the State Bar, its sub-entities and its use of volunteers continues to be a timely topic. For example, Board appointed sub-entities have created a second layer of advisory committees and volunteers; they too should be reviewed.

The current Task Force reviewed sub-entities in relation to its proposed mission statement, in order to assess whether the structure of the sub-entities aligns with assigned tasks and appropriate oversight mechanisms are in place. Based on that review, the Task Force identified a variety of issues regarding select sub-entities requiring further study. A more detailed summary of Task Force concerns and recommendations is contained in Appendix I, Review of Sub-

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<sup>32</sup> See Appendix L, Framework for Review of Sub-Entities and Board Committees.



Entities: Background and Recommendations. See also Appendix M, The State Bar of California Sub-Entities, a spreadsheet containing a description of each sub-entity’s function, program area, oversight committee, charge, creating authority, number of appointees, appointing authority, current status and technical notes related to structure.

## **TOPIC C.2 – BOARD COMMITTEE STRUCTURE AND FUNCTIONING**

At the Topic C meeting, the Task Force also reviewed and discussed the structure, size, composition and function of the Board’s own Committees, which assist the Board in its governance and oversight role.<sup>33</sup> The Board’s current Committees include:

- The Executive Committee
- The Regulation and Discipline Committee
- The Admissions & Education Committee
- The Stakeholders Relations, Access to Justice, and Appointments Committees
- The Audit Committee
- The Planning and Budget Committee

In addition, the Task Force reviewed and discussed the Board’s Liaison Policy, which outlines a process by which Board Trustees are appointed as liaisons to various sub-entities, rather than assigning the liaison function to specific Board Committees to effectuate.

Task Force Topic C considered each Board Committee’s scope of work, structure, composition, size, and purpose to identify recommendations to improve their efficiency and effectiveness. Through implementation of many of the 2016 Task Force recommendations, the interdependency between governance, organizational design and management structure has become increasingly obvious. The 2017 Task Force, like its 2016 predecessor, recognized these connected relationships, and agreed that further review of the interaction between Board Committees and management structure is needed.

The 2017 Task Force was unanimous in agreeing that the State Bar needs a Committee process that functions more vigorously. The Board should not be asked to micro-manage, but rather should be presented with the broader policy issues and choices for consideration and decision-making while maintaining its oversight role on major issues, particularly concerning the discipline system, the admissions function and State Bar finances.

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<sup>33</sup> See Appendix N, Board Committee Structure.

Three working principles emerged from these 2017 Task Force discussions:

- The number of State Bar sub-entities should be aligned with what the Board and its Committees reasonably can be asked to manage and oversee;
- Each sub-entity should fall under the oversight purview of an appropriate Board Committee; and
- Board Committees should determine the best methods of interacting with the sub-entities under their oversight purview, including whether to use liaisons.

The 2017 Task Force made specific recommendations to change the number, role and structure of Board Committees; the recommendations would accomplish the following:

- Reduce the number of Board Committees from six to five;
- Consolidate responsibility for program oversight from three to two Committees, one for discipline and the second for all other program areas;
- Balance workload more evenly among Committees;
- Require a comprehensive review of financial statements at regular intervals; and
- Include governance review as an ongoing Board topic, integrated into the strategic and budget planning processes.

One recurring issue in the discussion of Board Committees concerned the role of the Task Force itself. The Task Force recommendation that it be retired or suspended should not be seen as discounting its appreciation for the deep value it provides as a place for critical thinking and sustained dialogue on issues of importance to the governance of the State Bar and management of its activities. The Task Force believes, however, that attention to governance ought not to occur only periodically every three years, but rather should be an ongoing process, particularly given the likelihood of systemic change in the State Bar's governance structures and its functional responsibilities if the Sections do depart. For this reason, the Task Force preference is to include its functions into an ongoing Board process fully integrated into Board strategic planning and organizational assessment activities.

In addition, the State Bar has just completed the 2017-2022 Five-Year Strategic Plan, and is in the midst of developing an operational plan to implement the goals and objectives it presents. This is another reason why the State Bar should maintain its focus on the positive challenges that immediately lie ahead, rather than be delayed for an additional three years before it conducts another governance review.

Despite the diversity of 2017 Task Force perspectives, there generally was unanimous agreement about its recommendations. Unlike prior Task Force reports, the 2017 Task Force Report is not divided into majority and minority reports. The consensus achieved by the 2017



Task Force reflects tremendous hard work, but also the fewer number of major governance issues left to be resolved. By recognizing the importance of internalizing governance as an ongoing Board topic, and proposing that it be aligned with the strategic and budget planning processes, it is the 2017 Task Force’s belief that the State Bar’s major governance reforms have been identified. Now the focus of the entire Board of Trustees must shift to implementing operational reforms and addressing the structural questions identified in the 2017 Report. If this is done, the combined recommendations of the three Task Force reports will guide the State Bar to create an organization that is manageable, transparent, accountable, and capable of continuous focus on excellence in its primary public protection mission.<sup>34</sup>

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<sup>34</sup> See Appendix O, Proposed State Bar of California Program Structure.

## **CONCLUSION**

The two-year period from 2015 to 2017 has been one of accelerating transformational change for the State Bar of California. Informed by work begun by the 2016 Task Force, this 2017 Task Force Report, when combined with reports required by the Legislature in response to the 2015 recommendations of the State Auditor, creates a road map for the future of the State Bar of California. Together this body of work and the recommendations they contain, many already completed, offer a clear agenda for a program of ongoing reform, designed to improve the functioning of the State Bar. While other new topics may be identified for further improvement, what will be most important in the immediate future is to ensure that the work accomplished in this two-year period of intensive review not be set aside, placed on a shelf and never implemented, as so often has occurred in the past. The 2017 Task Force believes that its work has finalized a ‘blueprint for reform,’ which the State Bar, the Board of Trustees and State Bar staff can now implement with success. To do so, the 2017 Task Force also recommends that the State Bar’s recently adopted 2017-2022 Five-Year Strategic Plan be reviewed and updated by the Board of Trustees to ensure that recommendations of the 2017 Task Force are appropriately integrated and reflected in that document.



APPENDIX A

GOVERNANCE IN THE PUBLIC INTEREST TASK FORCE: STATUTORY DIRECTIVE

## APPENDIX A

### **Governance in the Public Interest Task Force: Statutory Directive**

Business and Professions Code section 6001.1 states:

Protection of the public shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

(Added by Stats. 2011, ch. 417.)

Business and Professions Code section 6001.2, subdivision (b), states, in pertinent part:

[E]very three years ..., the task forced shall prepare and submit a report to the Supreme Court, the Governor, and the Assembly and Senate Committees on Judiciary that includes its 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, to be reviewed by the Assembly and Senate Committees on Judiciary in their regular consideration of the annual State Bar dues measure.

(Former § 6001.2 added by Stats. 2010, ch. 476, repealed & replaced by Stats. 2011, ch. 417.)

APPENDIX B

GOVERNANCE IN THE PUBLIC INTEREST TASK FORCE: COMPOSITION

## APPENDIX B

### **Governance in the Public Interest Task Force: Composition**

Business and Professions Code section 6001.2, subdivision (a), states in pertinent part:

[T]he Governance in the Public Interest Task Force [is] comprised of 7 members, including 6 members appointed as provided herein and the President of the State Bar. Two members shall be elected attorney members of the board of trustees who are selected by the elected attorney members, two members shall be attorney members of the board of trustees appointed by the Supreme Court who are selected by the Supreme Court appointees, and two members shall be public members of the board of trustees selected by the public members.

(Former § 6001.2 added by Stats. 2010, ch. 476, repealed & replaced by Stats. 2011, ch. 417.)

The 2017 Governance in the Public Interest Task Force is composed of:

- Jim Fox, President of the Board of Trustees;
- Renee LeBran, a public trustee appointed by the Governor, selected to serve on the Task Force by the public trustees;
- Richard Ramirez, a public trustee appointed by the Speaker of the Assembly, selected to serve on the Task Force by the public trustees;
- Joanna Mendoza, the District 3 elected attorney trustee, elected to the Task Force by elected attorney trustees;
- Sean SeLegue, the District 1 elected attorney trustee, elected to the Task Force by elected attorney trustees;
- Alan Steinbrecher, a Supreme Court appointed attorney trustee, selected to serve on the Task Force by the Supreme Court appointed attorney trustees; and
- Mark Broughton, a Supreme Court appointed attorney trustee, selected to serve on the Task Force by the Supreme Court appointed attorney trustees.

APPENDIX C

GOVERNANCE IN THE PUBLIC INTEREST TASK FORCE: HISTORY

## APPENDIX C

### **Governance in the Public Interest Task Force: History**

#### *Legislative History*

The current Governance in the Public Interest Task Force (Task Force) structure has its origin in Assembly Bill 2764 (introduced in the 2009-2010 Legislative session) “to take helpful stock about what if any structural and other potential improvements might make the Bar’s public protection effort as vigorous as possible.” (See Sen. Jud. Com., Analysis of Assem. Bill 2764 (2009-2010 Reg. Sess.) as amended August 25, 2010.) The bill came in response to concerns about actions of the then Board of Governors that failed to consider public protection. (*Ibid.*) In support, the legislative history cites several examples.

- In June 2009, the Board approved a scaled-back on-line “Find a Lawyer” program;
  - Critics claimed this omitted helpful consumer information and was a response to local bar association opposition.
- In 2010, the Board “nearly” voted to oppose two consumer protection measures that addressed attorney participation in foreclosure related scams.
- In June 2009, the Board decided not to reappoint the Chief Trial Counsel;
  - It was alleged that the then Chief Trial Counsel was too aggressive in pursuing attorney misconduct.
- Last, the Board approved malpractice insurance disclosure requirements, but only an allegedly scaled-back version after a three-year process.

As a result, the Legislature sought to highlight the central importance of public protection in the State Bar’s mission.

Under the original Task Force statute, the Task Force was composed of 11 members tasked to prepare and submit a report to the Supreme Court, the Governor and both Legislative Houses containing 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. Thereafter, the Task Force statute was repealed and replaced. The new statute reduced the size of the Task Force to seven members and directed the Task Force to make suggestions to the Board of Trustees regarding the strategic plan and other issues as requested by the Legislature in addition to fulfilling its original mandate. (Former § 6001.2 added by Stats. 2010, ch. 476, repealed by Stats. 2011, ch. 417; new § 6001.2 added by Stats. 2011, ch. 417, operative Jan. 1, 2013.)

#### *The 2011 Task Force Report*

The first Task Force was tasked with producing a report within a short timeframe. It therefore decided to focus strictly on the overarching governance structure of the State Bar. This first Task Force considered the following issues: size of governing board; composition and terms of its members; selection process for members and the president; qualifications of members;

## APPENDIX C

transparency of Board meetings; overall purpose of the State Bar in making public protection the governing board's highest priority. Consensus was not reached on all the recommendations, specifically those relating to size, composition and manner of selection of the governing board. Thus, the first 2011 Task Force Report included both majority and minority reports. Nonetheless, consensus was reached on the following:

- (1) Renaming the Board of Governors to Board of Trustees.
- (2) Including Supreme Court appointments on the governing board.
- (3) Creating a Merit Screening Committee for Supreme Court appointments.
- (4) Creating a mechanism for reappointment.
- (5) Retaining majority attorney membership on the Board.
- (6) Creating three-year staggered terms for trustees, with eligibility for reappointment (in parity with public members).

In addition to the consensus items described above, the majority supported:

- (1) Retaining the 23-member size of the governing board, without change to the number of attorney members, as necessary to adequately populate the committees.
- (2) Retaining elections as a means for filling attorney member seats (but with agreement that there should also be appointed attorney members).

Thus, under the majority proposal, the 23-member governing board would be composed of 12 attorney members elected from five new electoral districts; three attorney members appointed by the Supreme Court; one member appointed by the *California Young Lawyers Association*; six public members appointed pursuant to existing law; and a president. The five new electoral districts for the 12 elected attorney members would be based on existing appellate court district boundary lines, appellate court districts one and six combined for one of the five new electoral districts.

The majority also proposed adoption of minimum qualifications for members, including a new conflict of interest rule.

Finally, the majority proposed two internal operational changes:

- (1) Inclusion in the Regulation, Admission and Discipline Committee and the Member Oversight Committee of at least 40 percent public members and at least one Supreme Court appointee.

## APPENDIX C

- (2) Revision of the Board Book for “improved strategic continuity and improved communication and responsiveness to the public, the Legislature, the Governor and the Supreme Court.”<sup>1</sup>

In addition to the consensus items described above, the minority supported:

- (1) A smaller 15-member Board (including the president), which would be all appointed, with the nine attorney members appointed by the Supreme Court and the six public members appointed pursuant to existing law.
- (2) A president selected by the Supreme Court upon application by an interested member who had served at least 2 years.
- (3) A presidential term of one year, but subject to reappointment by the Supreme Court.
- (4) A statutory revision that would make public protection paramount.

The minority made recommendations covering a variety of other topics such as an oath requirement and free ethics minimum continuing legal education. It is noted for historical purposes that the minority proposed adoption of Bagley-Keene open meeting requirements, which occurred with passage of legislation in 2015. It is also noted that there were strong views expressed about whether the State Bar should remain ‘unified.’ The minority proposed that the Task Force report back in 2013 on whether the unified bar advances public protection. The majority rejected the minority’s rationale for de-unification, arguing that the creation of the State Bar Court eliminated any remnant of ‘self-regulation’ and the United States Supreme Court decision in *Keller v. State Bar of California* (1990) 496 U.S. 1, 14 eliminated any concern about the politicization of the State Bar.

### *Senate Bill 163*

Legislation in 2011 implemented a number of majority and minority recommendations, as contained in the 2011 Task Force Report:

- Made public protection the highest priority for the State Bar. (Bus. & Prof. Code, § 6001.1.)
- Renamed Board of Governors as the Board of Trustees.
- Replaced existing State Bar districts for election of attorney members with new districts based on the boundary lines of the six appellate court districts; provided for election of six attorney members from the newly created districts to serve three-year

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<sup>1</sup> A governance subcommittee of the Board’s planning committee had already implemented a number of changes addressing the majority’s concerns including: (1) improvements to external messaging; (2) improvements to year-to-year continuity; and (3) re-examination of the role and mode of selection of the president.

## APPENDIX C

terms with the possibility of re-election to one additional term. (Bus. & Prof. Code, §§ 6012, 6013.2.)

- Added appointment of attorney members by the Supreme Court. (Bus. & Prof. Code, § 6013.1.)
  - Three-year terms with eligibility for reappointment for one additional term.
  - Supreme Court to fill vacancies in the term of any appointed attorney member.
  - Criteria for appointment include type of practice (legal services, small firm or solo practice); membership in historically underrepresented and diverse groups; legal academics; geographic distribution; years of practice (within first five years of practice or 36 years of age and under); participation in voluntary local or State Bar activities.<sup>2</sup>
- Added appointment of one attorney member by Senate Rules Committee and one by Speaker of the Assembly to serve three-year term with the possibility of reappointment. (Bus. & Prof. Code, § 6013.3.)
- Created one-year term for president subject to re-election for an additional one-year term. Bus. & Prof. Code, § 6021, subd. (b).<sup>3</sup>

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<sup>2</sup> In 2013, the Supreme Court adopted California Rules of Court, rule 9.90, which established the State Bar Trustees Nominating Committee to serve at the pleasure of the Court and screen and evaluate prospective appointees. Rule 9.90 requires the committee to determine whether the applicant possesses not only the statutorily enumerated qualifications, but also any other qualifications that may be required to carry out the duties of a trustee.

<sup>3</sup> Senate Bill 163 eliminated the ability of the president to serve an additional fourth year when elected in the third and final year of office, but subsequent legislation reinstated that provision. (See, Bus. & Prof. Code, § 6021, subd. (c).) It is noted that the 2018 fee bill proposes to eliminate the fourth year presidency option.

APPENDIX D

REDUCTION IN SUB-ENTITIES

## APPENDIX D

### Reduction in Sub-Entities

#### Existing Sub-Entities

#### Change in Status

#### Section Executive Committees

- |  |  |
|--|--|
| 1. <i>Antitrust/UCL/Privacy</i>        | Move to new Sections entity by 2018 fee bill |
| 2. <i>Business</i>                     | Move to new Sections entity by 2018 fee bill |
| 3. <i>Criminal</i>                     | Move to new Sections entity by 2018 fee bill |
| 4. <i>Environmental</i>                | Move to new Sections entity by 2018 fee bill |
| 5. <i>Family</i>                       | Move to new Sections entity by 2018 fee bill |
| 6. <i>Intellectual Property</i>        | Move to new Sections entity by 2018 fee bill |
| 7. <i>International</i>                | Move to new Sections entity by 2018 fee bill |
| 8. <i>Labor/Employment</i>             | Move to new Sections entity by 2018 fee bill |
| 9. <i>Law Practice Management/Tech</i> | Move to new Sections entity by 2018 fee bill |
| 10. <i>Litigation</i>                  | Move to new Sections entity by 2018 fee bill |
| 11. <i>Public</i>                      | Move to new Sections entity by 2018 fee bill |
| 12. <i>Real Property</i>               | Move to new Sections entity by 2018 fee bill |
| 13. <i>Solo/Small Firm</i>             | Move to new Sections entity by 2018 fee bill |
| 14. <i>Taxation</i>                    | Move to new Sections entity by 2018 fee bill |
| 15. <i>Trusts/Estates</i>              | Move to new Sections entity by 2018 fee bill |
| 16. <i>Workers Compensation</i>        | Move to new Sections entity by 2018 fee bill |

#### *California Board of Legal Specialization (CBLS) advisory commissions*

- |                                    |  |
|------------------------------------|--|
| 17. <i>Admiralty/Maritime</i>      | Appointment authority to transfer from Board to CBLS |
| 18. <i>Appellate</i>               | Appointment authority to transfer from Board to CBLS |
| 19. <i>Bankruptcy</i>              | Appointment authority to transfer from Board to CBLS |
| 20. <i>Criminal</i>                | Appointment authority to transfer from Board to CBLS |
| 21. <i>Trusts/Estates/Probate</i>  | Appointment authority to transfer from Board to CBLS |
| 22. <i>Family</i>                  | Appointment authority to transfer from Board to CBLS |
| 23. <i>Franchise/Distribution</i>  | Appointment authority to transfer from Board to CBLS |
| 24. <i>Immigration/Nationality</i> | Appointment authority to transfer from Board to CBLS |
| 25. <i>Legal Malpractice</i>       | Appointment authority to transfer from Board to CBLS |
| 26. <i>Taxation</i>                | Appointment authority to transfer from Board to CBLS |
| 27. <i>Workers Compensation</i>    | Appointment authority to transfer from Board to CBLS |

## APPENDIX D

### Non-Governing Standing Committees

- |   |  |
|---|--|
| 28. <i>Alternative Dispute Resolution</i> | Terminated by Board; Responsibility transferred to Litigation Sec. |
| 29. <i>Federal Courts</i>                 | Terminated by Board; Responsibility transferred to Litigation Sec. |
| 30. <i>Appellate Courts</i>               | Terminated by Board; Responsibility transferred to Litigation Sec. |
| 31. <i>Administration of Justice</i>      | Terminated by Board; Responsibility transferred to Litigation Sec. |

### Other

- |   |  |
|---|--|
| 32. <i>California Young Lawyers Association</i>   | Move to new Sections entity by 2018 fee bill                 |
| 33. <i>Committee on Group Liability Insurance</i> | Terminated by Board (eff. 5/31/17); new Sections entity area |

### Remaining Sub-Entities

#### Administration of Justice

1. *California Commission on Access to Justice* (merged with *Committee on Delivery of Legal Services*)
2. *Legal Services Trust Fund Commission*
3. *Council on Access and Fairness*
4. *Commission on Judicial Nominees Evaluation*
5. *Judicial Nominations Evaluations Review Committee*

#### Prevention and Remediation

6. *Lawyer Assistance Program Oversight Committee*
7. *Committee on Mandatory Fee Arbitration*
8. *Client Security Fund Commission*
9. *Committee on Professional Liability Insurance*

#### Licensing/Admissions<sup>1</sup>

10. *Committee of Bar Examiners*

#### Ethics/Competence<sup>2</sup>

11. *Committee on Professional Responsibility & Conduct*

#### Legal Specialization

12. CBLS

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<sup>1</sup> Not included on this list is the *Law School Council*, which functions as an advisory body to the *Committee of Bar Examiners*.

<sup>2</sup> Not included on this list is the second *Commission for Revision of Rules of Professional Conduct*, as most of their work – the overhaul of the Rules of Professional Conduct – was completed on March 31, 2017. Only a skeletal body has been retained for the duration of the Supreme Court’s review and approval process.

APPENDIX E  
PUBLIC COMMENT

## APPENDIX E

### Public Comment

#### December 12, 2016: Overview and Setting of Agenda

*Written Public Comment:* None

*Oral Public Comment:* Bridgett Fogarty Gramme, Administrative Director, Center for Public Interest Law, University of San Diego School of Law (CPIL)

**Summary:** Based on experience monitoring state agencies that regulate business, professions and trade, Ms. Gramme offered the perspective that the most important goal of the Task Force is to take a good look at the composition of the Board of Trustees. Right now it is made up of a super majority of lawyers who are active participants in the market being regulated. From CPIL's perspective, this is not an ideal governing structure; the public's interest, not the interest of the profession, must be taken into consideration while doing the State Bar's regulatory work. Though CPIL acknowledges that the State Bar Office of General Counsel takes a different position, CPIL believes that the State Bar is subject to anti-trust liabilities given current Board composition because of *North Carolina State Board of Dental Examiners v. FTC* in which the Supreme Court held that regulatory boards dominated by members of the profession being regulated are not protected from the anti-trust laws unless they are actively supervised by a sovereign entity. CPIL does not believe that the Board is being actively supervised by a sovereign entity. CPIL cites as an example the bar exam itself. CPIL believes that the exam serves as a barrier to entering the legal profession. If the pass decision is made by a Board made up of lawyers, it is like 'raising the draw bridge,' so that more lawyers cannot enter the profession. That is both an anti-trust violation and a felony offense. CPIL wants the Task Force to determine the meaning of public protection. This is part of the State Bar's statutory mandate and it is a priority. As CPIL urged, protecting the public from lawyers who are unethical and incompetent, and causing irreparable harm to the public, should be the goal.<sup>1</sup>

#### January 17, 2017: Topic A – The Mission Statement

*Written Public Comment:* None

*Oral Public Comment:* None.

#### February 9, 2017: Topic B – Structure and Functioning of the Board of Trustees

*Written Public Comment:*

(1) February 9, 2017, letter to Topic B Co-Chairs from CPIL (attached)

*Oral Public Comment:* Bridgett Fogarty Gramme, Administrative Director, Center for Public Interest Law, University of San Diego School of Law (CPIL)

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<sup>1</sup> The summary was extracted from live webcasted testimony of varying quality, requiring some interpretation.

## APPENDIX E

**Summary:** Ms. Gramme discussed a letter filed by CPIL in which the case of *North Carolina Board of Dental Examiners* as it applies to the Board is discussed. CPIL noted that the low pass rate raises the possibility of an anti-trust violation. CPIL believes that denying people membership in the State Bar presents an anti-trust violation issue. CPIL acknowledges the State Bar Office of General Counsel takes a different view based on the fact that the California Supreme Court is the main regulator, relying on *Hoover v. Ronwin*. CPIL argues that the facts in that case were different. The fact that the Arizona state bar board members are all appointed by the Arizona Supreme Court, according to CPIL, makes the case distinguishable. CPIL wants more public members on the Board to avoid the impact of the *North Carolina* case. CPIL urges the Board to eliminate elections, increase public members to a super majority or have an independent body approve decisions.<sup>2</sup>

Ms. Gramme commented that the open meeting requirement has been a good development, but the following improvements are needed:

- Increase transparency: there should be public comment on every agenda item; public comment should be possible from a phone, as well.
- Public comment should be included on the agenda.
- Agenda management should be looked at.

CPIL notes problems not being addressed by the Board:

- Overbilling by attorneys.
- Insurance for attorney misconduct.
- Resistance from attorneys to limited license technicians proposals.

CPIL urged that all State Bar activities be reviewed from the outside, to ensure that State Bar policies are not anti-regulatory.

Ms. Gramme observed the following about the Board:

- The need for a mix of skills and independence.
- The problem about lawyers regulating themselves.
- The Board needs the Supreme Court or someone to appoint people to check the board.
- The Board needs more non-attorneys and non-active market participants; ‘recusing yourself is not good enough.’
- Public protection is what the Board should be focused on.

CPIL noted that the State Bar Office of General Counsel is working on an anti-trust policy and recommended that it look carefully at the bar exam structure, focusing on the relationship between the *Committee of Bar Examiners* and the Board. The structure of this relationship should be compared to the structure of such bodies in other states around the country.

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<sup>2</sup> See footnote 1.

## APPENDIX E

### March 8, 2017: Topic C – Structure and Functioning of the State Bar Sub-Entities and the Board of Trustees’ Committees

*Written Public Comment:* None

*Oral Public Comment:* Kelli Evans, Senior Director, Office of Legal Services of the State Bar of California

**Summary:** In a brief presentation to the Task Force, Ms. Evans talked about the access to justice sub-entities, which are supported by the Office of Legal Services staff. Ms. Evans discussed the role played by the *California Commission on Access to Justice*, in particular, in supporting policy and program development designed to increase access to justice for all Californians.

### April 10, 2017: Identification of Open Items (telephonic meeting)

*Written Public Comment:* None

*Oral Public Comment:* None

### April 24, 2017: Resolution and Finalization of Open Items

*Written Public Comment:*

- (1) April 19, 2017, letter from Justice Norman L. Epstein to President Jim Fox regarding the Witkin Medal (attached)

*Oral (by telephone) Public Comment:* Joel Mark, Member, former Presiding Arbitrator and former Chair of Committee on Mandatory Fee Arbitration

**Summary:** Mr. Mark advised the Task Force of the value of utilizing the expertise of members of the *Committee on Mandatory Fee Arbitration* who have developed and modified training materials; updated and tracked arbitration awards; made public comment on and tracked changes in the law; monitored pending legislation and court cases; and prepared proposed legislation to conform to case authorities. Additionally, Mr. Mark noted that the Committee continues to train local bar staff; reviews and updates program materials (notices, sample fee agreement forms, guidelines, etc.); reviews and recommends approval of local bar rule changes; and updates case summaries. Mr. Mark stated that this is all substantive work requiring acquired expertise and intimate familiarity with law, rules and practices.



February 9, 2017

Mark Broughton and Richard Ramirez, “Topic B” Co-chairs, and Members  
Governance in the Public Interest Task Force  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

re: Testimony of the Center for Public Interest Law regarding  
Organizational Structure of the Bar to Enhance Protection of the People of California

Dear Mr. Broughton, Mr. Ramirez, and Task Force Members:

On behalf of the Center for Public Interest Law (CPIL), I write to address our specific recommendations for the optimal organizational structure of the State Bar of California in order to best achieve the Bar’s public protection mandate. CPIL has been studying the State Bar, as well as numerous other occupational licensing agencies in California, for the past 37 years. I have personally been involved with monitoring the Bar since 2014, and have attended and participated in each meeting of the 2016 Governance Task Force last year.

First, I would like to commend all of you, and especially Ms. Parker, Ms. Wilson, and Ms. Cohen, for the extraordinary amount of thought and careful consideration you have dedicated over the past year to address and define the Bar’s public protection mandate, and enhance the Bar’s transparency and accountability to the people of California. It is very encouraging to see the progress you have made towards bringing this organization more in line with its regulatory mission – specifically, your webcasting efforts and pending website redesign, improved financial policies, workforce planning implementation, increased dedication of funds to improve the discipline system, and most recently the separation of your trade association functions from the Bar’s organizational structure.

Today, I will focus my remarks on two topics. First, I urge this Task Force to carefully consider a critical aspect of public protection that you simply cannot afford to ignore: reforming the Board of Trustees’ organizational structure to comply with the U.S. Supreme Court’s February 2015 decision in *North Carolina State Board of Dental Examiners v. FTC*. I spent a great deal of time with the 2016 Task Force addressing this very topic, and the Supreme Court specifically directed the Bar to propose a policy on this very issue in September of last year. Second, I provide specific recommendations for improving the Bar’s transparency and public participation efforts going forward.

### **CPIL Expertise in State Bar Matters**

CPIL is a nonprofit, nonpartisan academic and advocacy center based at the University of San Diego School of Law. Since 1980, CPIL has examined and critiqued California's regulatory agencies, including the State Bar of California. We have attended the Bar's meetings and followed its activities for 35 years. From 1987 to 1992, CPIL's Executive Director, Professor Robert C. Fellmeth, served as the State Bar Discipline Monitor (under now-repealed Business and Professions Code section 6086.9), under appointment by then-Attorney General John Van de Kamp, with CPIL serving as the Monitor's staff. The State Bar Discipline Monitor position was created by the Legislature and — over the course of almost five years — CPIL wrote eleven reports on the operation of the State Bar's discipline system, reporting to the Judiciary Committees and to the Chief Justice of the California Supreme Court. CPIL worked with Senator Robert Presley and a succession of State Bar Presidents to fashion some 40 reforms of the system, including the passage of Senate Bill 1498 (Presley), 1988 legislation creating the current independent State Bar Court. We participated actively in the proceedings and deliberations of the 2010 Governance in the Public Interest Task Force, whose work culminated in the Legislature's passage of SB 163 (Evans) (Chapter 417, Statutes of 2011). Our work and research prompted further reforms contained in SB 387 (Jackson) (Chapter 537, Statutes of 2015). We are well aware that the Bar is part of the judicial branch under the aegis of the California Supreme Court. And we are similarly familiar with all of the executive branch agencies that license and regulate other professions and trades in California.

#### **I. The Board of Trustees Should Be Restructured to Comply with *North Carolina***

##### **A. The *North Carolina* Decision Applies to the State Bar of California**

In its landmark decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, \_\_\_ U.S. \_\_\_, 135 S. Ct. 1101 (2015) ("*North Carolina*"), the U.S. Supreme Court recognized the inherent conflict of interest that exists when a state licensing board is largely comprised of members of the trade regulated by that board. For the first time, the Supreme Court explicitly held that boards are not immune from federal antitrust scrutiny unless (a) they are controlled by public members — not licensees; or (b) the state has created a mechanism to actively supervise the acts and decisions of these boards to ensure they are acting for the benefit of the public, and not for the benefit of the professions themselves. By repeatedly citing a case specifically involving the legal profession, the Court went out of its way to include the regulation of attorneys expressly within its holding. "State agencies are not simply by their governmental character sovereign actors for purposes of state-action immunity. See *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 791, 95 S.Ct. 2004, 44 L.Ed.2d 572 (1975) ("The fact that the State Bar is a state agency for some limited purposes does not create an antitrust shield that allows it to foster anticompetitive practices for the benefit of its members")." *North Carolina*, 135 S. Ct. at 1111.

Professor Fellmeth and I provided extensive written and oral testimony to the 2016 Task Force, explaining that the *North Carolina* holding places the State Bar of California at significant

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risk of antitrust liability. First, the Bar is unquestionably controlled by lawyers – indeed the Board of Trustees consists of a supermajority of lawyers, six of whom are elected to the Board by their peers. Second, the Bar routinely makes decisions that have anticompetitive impact. For example, Bar exam passage criteria and admission details are in fact supply control decisions – keeping people out of the market for legal services and artificially increasing prices. This type of restraint of trade is unlawful as a matter of law.

In response to our testimony, the Bar’s Office of General Counsel (OGC) researched the applicability of the *North Carolina* case, and opined that the Court’s holding does not raise serious concerns for the State Bar of California. We respectfully disagree.

OGC’s main argument is that “the State Bar’s core regulatory functions (admissions, attorney discipline, and rules of professional conduct) fall under the ‘sovereign immunity’ exception to antitrust liability because the California Supreme Court is the ‘ultimate decision maker’ over these functions.” See 2016 Governance in the Public Interest Task Force Majority Report at 22. In our view, however, OGC’s heavy reliance on *Hoover v. Ronwin*, 466 U.S. 558 (1984), and *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), ignores critical factual distinctions between the structure of the Arizona Supreme Court and the California Supreme Court *vis a vis* the level of supervision and delegation of these critical regulatory functions.

In *Hoover*, for example, the plaintiff was an unsuccessful applicant for admission to practice law in Arizona and sued the Arizona Supreme Court’s Committee on Examinations and Admissions, alleging that the Committee had conspired to restrain trade in violation of the Sherman Act by reducing the number of competing attorneys in the state. The Supreme Court held that because the defendants “were each members of an **official body selected and appointed by the Arizona Supreme Court,**” and because the Supreme Court found that the Arizona court “retained **strict supervisory powers and ultimate full authority** over the [committee’s] actions,” the Court itself (and not the committee) was the actor and state action immunity therefore applied. *Hoover*, 466 U.S. at 572 (emphasis added).

Critical to the Court’s holding was “the court’s **direct participation in every stage of the admissions process**, including retention of the sole authority to admit or deny.” *Id.* at 579, n.30. Specifically, the Arizona Supreme Court itself promulgated its own rules that specified the subjects to be tested and the general qualifications required of applicants for the Bar, including explicit Supreme Court Rules authorizing the Committee to determine an appropriate grading or scoring system. *Id.* at 572. The Arizona Supreme Court’s rules also limited the Committee’s authority to making recommendations to the Supreme Court; the court itself made the final decision to grant or deny admission to practice law. *Id.* Ultimately, the U.S. Supreme Court did not analyze the active state supervision element of *Parker v. Brown* because the Court held that the Arizona Supreme Court itself was the actor—it had not delegated any power to the committee, but the committee was merely advisory. *Id.* at 579.

The structure in California, however, is much different. Unlike in Arizona, the California Committee of Bar Examiners is a standing committee of the State Bar (not the Court), and its members are appointed by the Board of Trustees, the Governor, and the Legislature. **None of the**

**members of the Committee of Bar Examiners are appointed by the California Supreme Court.** Indeed, this Task Force spent quite a bit of time at its January meeting discussing the dismal bar passage rates in California and the fact that the Committee of Bar Examiners is barely supervised by the Board of Trustees – let alone the Supreme Court.

Moreover, while the Supreme Court maintains its own rules pertaining to several committees and programs (*see e.g.*, California Rule of Court Rule 9.80 (establishing Committee of Judicial Ethics Opinions)), it does not have its own rules pertaining to the Committee of Bar Examiners or the administration of the Bar Exam. Instead, the rules pertaining to the Bar exam are contained within the Rules of the State Bar of California – promulgated by the Board of Trustees.

Accordingly, this Task Force would be wise to take a more careful look at the *North Carolina* case, its holding, and its implications for fulfilling the Bar’s statutory mandate to first and foremost protect the people of California. While we prefer to work with the Bar, and specifically this Task Force, to implement the *North Carolina* decision and prevent future antitrust violations from occurring, CPIL is prepared to resort to litigation and let a court decide this matter if the Bar does not reform itself to comply with this decision. CPIL’s specific recommendations for doing so are provided below.

#### **B. Especially after *North Carolina*, lawyers can no longer self-regulate**

Even though they may have the best of intentions, lawyers are no different from any other profession when it comes to self-regulation — as the *North Carolina* Court thoughtfully stated:

State agencies controlled by active market participants, who possess singularly strong private interests, pose the very risk of self-dealing *Midcal*’s supervision requirement was created to address. [citation] **This conclusion does not question the good faith of state officers but rather is an assessment of the structural risk of market participants’ confusing their own interests with the State’s policy goals.** [citation]

135 S. Ct. at 1114 (emphasis added, internal citations omitted).

I have heard members of this Board, including members of this Task Force, discuss the concept of self-regulation at length, and Justice Kennedy’s point bears repeating: This is not about the specific individuals serving on the Board today. I am sure all of you are acting with the utmost care, and with every intention to protect the people of California. This is about the structure of the Board itself. You must be attuned to your own hidden biases. Justice Kennedy went to great lengths to reiterate this very point. “[E]stablished ethical standards may blend with private anticompetitive motives in a way difficult even for market participants to discern. **Dual allegiances are not always apparent to an actor. In consequence, active market participants cannot be allowed to regulate their own markets free from antitrust accountability.**” 135 S. Ct. at 1111 (emphasis added). This is not mere “rhetoric” designed to personally attack the members of this Board – this is the opinion of the U.S. Supreme Court—the law of the land.

### C. CPIL's Specific Recommendations

**(1) Restructure the Board of Trustees:** The simplest way to avoid antitrust liability (and ensure the interest of the public is properly considered and protected) in light of *North Carolina* is to recommend that the Legislature convert the Board composition to a supermajority of public members, with the added provision that no vote may be taken where those voting are not public members in the majority. At minimum, the Legislature must eliminate the remaining six elected attorney positions on the Board of Trustees (see below).

**(2) Request that the Supreme Court establish an independent, “active state supervision” mechanism to review the Bar’s rulemaking and other actions for anticompetitive activity:** Unless the Bar recommends that the Legislature restructure the Board of Trustees into a public member supermajority, it needs to establish some form of “active supervision” mechanism to review its decisions for anticompetitive activity. Indeed, the Chief Justice recognized this when she specifically requested that the Bar formulate a policy that it must follow in identifying, analyzing, and bringing to the court any proposed board action that implicates antitrust concerns. *See* September 8, 2016 Letter from the Chief Justice to the Bar at p. 2. Thus far, the Board of Trustees has not addressed this issue.

For example, a “competition review body” could be established within the California Supreme Court to oversee supply, group boycott, and other restraints that naturally occur within regulatory agencies. That entity must not be under the control of actively practicing attorneys, and it must not perform in a *pro forma* fashion; instead, it must “actively” review any decision with an eye towards the anticompetitive impact of these decisions. *Per North Carolina*, this entity must also have the clear power to “modify or veto particular decisions to ensure they accord with state policy.” 135 S. Ct. at 1116.

CPIL stands ready to assist this Task Force, and Bar staff, with the formulation of such a policy. We have been working with the Legislature on similar mechanisms with respect to Department of Consumer Affairs regulatory boards, and have drafted proposals which we would be happy to share.

**(3) Eliminate Elections: The Board of Trustees Should Be Appointed by Public Officials, Not By Professional Colleagues.**

Six of the Board of Trustees’ attorney members are elected by those they are charged with regulating – practicing attorneys. Imagine if physicians could vote for and select Medical Board members; or insurance companies could select the Insurance Commissioner; or utilities could choose the members of the California Public Utilities Commission. A bill that sought to enact such regimes would likely fail to earn a single vote. This indefensible policy must end. For these six elected Trustees, their allegiance is understandably but inappropriately with the colleagues who selected them — not the public whom the Board is supposed to protect as its paramount priority.

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These six attorney positions should be converted to public members, with three appointed by the California Supreme Court, and one each by the Governor, Senate, and Assembly. Even if the attorney-controlled format is continued, these positions should be appointed by public officials and not elected by persons the Bar is supposed to regulate in the public interest.

### II. CPIL's Recommendations for Enhancing Transparency and Accountability

As I mentioned above, we are very appreciative of the Bar's recent efforts to increase transparency. The webcasting of Board meetings was an important step in this direction, and we are happy to hear that the website will be upgraded soon. To maximize meaningful public participation in Bar meetings – including all committee meetings—I urge you to implement the following additional measures:<sup>1</sup>

- 1) **Permit public comment on each agenda item at the time the item is heard:** Public comment that is targeted to the matters at hand is much more meaningful, and permits the Board to consider public comments prior to making important decisions. Time limits can be imposed, and strictly enforced, to ensure the efficient management of the agenda.
- 2) **Allow public comment from the phone:** Many members of the public are unable to travel to San Francisco or Los Angeles to participate in your meetings. Now that you have webcasting, however, the opportunity exists for members of the public who are watching at home to provide their comment on important matters as they are occurring via telephone. This is routine at other professional licensing boards.
- 3) **Post meeting materials a week in advance:** I was happy to hear that this issue was addressed during the recent Board retreat in San Diego. Providing Board materials in advance is not only important to ensure that Trustees have time to review them, but also to ensure more meaningful public comment.
- 4) **Provide more detailed meeting minutes:** The Bar's current policy for meeting minutes is to provide a bare-bones accounting of final resolutions without much context or detail. I encourage you to consider a policy to provide more detailed minutes, and to post them, along with the agenda and meeting materials, in an easy-to-find location on your website.

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<sup>1</sup> I urge you to observe the next meeting of the Medical Board of California to see how these policies may be efficiently implemented.

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In conclusion, I am very grateful for the opportunity to provide my comments to this Task Force here today, and am happy to answer any questions or give further guidance as you work through these critically important issues.

Sincerely,

A handwritten signature in cursive script that reads "Bridget Fogarty Gramme".

Bridget Fogarty Gramme, Esq.  
Assistant Administrative Director  
Center for Public Interest Law

cc: Elizabeth Parker, Executive Director  
Sarah Cohen, Office of General Counsel  
Hon. Hannah-Beth Jackson, Chair, Senate Judiciary Committee  
Hon. Mark Stone, Chair, Assembly Judiciary Committee

APPENDIX E

April 19, 2017

Mr. James P. Fox  
President, State Bar of California  
180 Howard Street  
San Francisco, CA 94105

Dear Mr. Fox:

This letter concerns the Witkin Medal, which has been awarded annually by the State Bar since 1993. According to the citation which accompanies the award, it is “conferred . . . on persons who, through a career of extraordinary service, have made significant contributions to the quality of justice and legal scholarship in our state.”

I understand that the medal, as well as several other awards presented annually by the State Bar, may not be awarded this year. The reason, as I understand it, is due to the transition of function now underway under proposed legislation. The change, if enacted, would focus the State Bar principally or exclusively on admission to the practice of law and discipline of attorneys. Other functions, including the work now done by State Bar sections, would be taken over by a new or different entity. I take no position on that proposal.

But I hope a way can be found that will not interrupt the continuity of presentation of the Witkin Medal and the other annual awards. These awards inspire others and remind the public of the dedication and service of our profession. They merit retention, even if a large venue cannot be found for their presentation this year.

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I also urge that in the course of any reallocation of duties and services, the awards program, including the Witkin Medal and other recognitions promoting fairness and diversity in the Bar, be retained, whether they are administered by the State Bar or another suitable statewide entity. I understand that this subject will be taken up by the State Bar Governance in the Public Interest Task Force at its meeting on April 24. I hope that you will do whatever you can to encourage the continuation of the award and recognition program.

If there is anything that I can do to assist that effort I would be pleased to do it insofar as it is compatible with my judicial duties. And if there is any information I can provide, please let me know.

Sincerely,

Norman L. Epstein

APPENDIX F

THE STATE BAR OF CALIFORNIA  
2017-2022 FIVE-YEAR STRATEGIC PLAN



## THE STATE BAR OF CALIFORNIA

180 HOWARD STREET, SAN FRANCISCO, CA 94105-1639  
Tel: (415) 538-2000 Fax: (415) 538-2305

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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 15, 2017

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.

We are pleased to submit the attached 2017-2022 Five-Year Strategic Plan of The State Bar of California, as required by Business and Professions Code section 6140.12 (added Stats. 2011, ch. 417, § 47).

We anticipate enhancements to this Plan when the work of the 2016-17 Governance in the Public Interest Task Force is completed on May 15, 2017.

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 415-538-2075.



# THE STATE BAR OF CALIFORNIA

**JAMES P. FOX**  
*President*

180 HOWARD STREET, SAN FRANCISCO, CA 94105-1639

February 15, 2017

Honorable Tani G. Cantil-Sakauye  
Chief Justice of California  
Supreme Court of California  
455 Golden Gate Avenue  
San Francisco, CA 94102-3660

Honorable Jerry Brown  
Governor of California  
State Capitol, Suite 1173  
Sacramento, CA 95814

Honorable Kevin de León  
Senate President Pro Tempore  
State Capitol, Room 205  
Sacramento, CA 95814

Honorable Anthony Rendon  
Speaker of the Assembly  
State Capitol, Room 219  
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 3146  
Sacramento, CA 95814

Dear Chief Justice Cantil-Sakauye, Governor Brown, President pro Tem DeLeon, Speaker Rendon, Senator Jackson, and Assemblymember Stone:

I am pleased to submit the attached 2017-2022 Five Year Strategic Plan of The State Bar of California, as required by Business and Professions Code section 6140.12.

In 2017 The State Bar of California will celebrate its ninetieth anniversary, and will also implement important reforms as the agency shifts from one which combines private associational activities with governmental regulatory functions, to a government agency focused exclusively on the State Bar's paramount public protection mission. We welcome this change and look forward to using the 2017-2022 Strategic Plan as a road map and living document to ensure the success of this transformation.

The attached Strategic Plan outlines five fundamental goals, as dynamic as they are significant:

1. Successfully transition to the 'new State Bar' – an agency focused exclusively on public protection through regulating the legal profession and promoting access to justice.
2. Ensure a timely, fair, and appropriately resourced admissions, discipline, and regulatory system to uphold and enforce standards for the more than 250,000 lawyers licensed in California.

## APPENDIX F

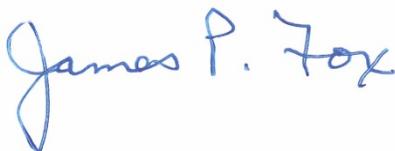
3. Improve the fiscal and operational management of the State Bar, emphasizing integrity, transparency, accountability, and excellence.
4. Support access to justice for all California residents and improvements to the state's justice system.
5. Proactively inform and educate all stakeholders, but particularly the public, about the State Bar's responsibilities, initiatives, and resources.

Together, these five goals and the specific objectives which enable their successful implementation are designed to enable the State Bar in setting a standard of performance and a level of excellence of which all Californians can be proud.

In this time of dramatic change and reform at the State Bar, the 2017-2022 Strategic Plan should be seen as an outline and a dynamic roadmap for change. It will be updated and expanded on as necessary implementation plans are perfected. As an initial first step, we anticipate enhancements to this Plan when the work of the 2017 Task Force on Governance in the Public Interest is completed on May 15, 2017. This work and the anticipated separation of the Sections are two important developments that will unfold in the months ahead. Thereafter, staff will develop an Operational Plan, which will outline the measurable activities that the Bar will undertake to achieve Strategic Plan goals. We are committed to updating the Strategic Plan periodically as our reform efforts proceed.

Sincerely,

James P. Fox



President

cc: Carin Fujisaki, Principal Attorney to the Chief Justice of California; Gregory Fortescue, Supreme Court Civil Central Staff; Nancy McFadden, Executive Secretary, Office of the Governor; Daniel Seeman, Deputy Legislative Secretary, Office of the Governor; Margie Estrada Caniglia, Chief Counsel, Senate Judiciary Committee; Alison Merrilees, Chief Counsel, Assembly Judiciary Committee

# Progress on 2016 Strategic Plan Goals and Objectives



**The State Bar of California**

180 Howard Street | San Francisco, CA 94105

Tel. 415-538-2221 | [www.calbar.ca.gov](http://www.calbar.ca.gov)



## PROGRESS ON 2016 STRATEGIC PLAN GOALS AND OBJECTIVES

### Goal 1. Ensure a timely, fair, and appropriately resourced discipline and regulatory system.

- a. Conduct and implement Workforce Planning for the discipline system.
- b. Review and implement a Classification and Compensation Study for the discipline system, as part of an organization-wide effort.

***In Progress.*** On May 13, 2016, the California State Bar (Bar) submitted a Workforce Planning Report (Report) to the California State Legislature as mandated under Business and Professions Code 6140.16.1. That statute also requires the Bar to implement workforce planning recommendations by December 31, 2016. As reflected in the January 26, 2017, Workforce Planning Implementation Status Update, significant progress has been made in advancing many of the Report's recommendations.

***In Progress.*** Phase I of the Classification and Compensation Analysis, which addressed the Office of the Chief Trial Counsel only, was completed in May 2016. Phase II, comprising the remainder of the Bar, is nearing completion. This Phase incorporates Phase I findings with a broader set of recommendations addressing the entirety of the Bar's workforce. In general, Classification and Compensation Analysis results include recommendations for a reduced number of discrete classifications, articulated career pathways for State Bar employees, and salary adjustments to align State Bar compensation with that of comparable agencies.

- c. 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.

***In Progress.*** Staff in the Office of Research and Institutional Accountability (ORIA) has taken responsibility for the production of the ADR to ensure transparency, consistency and accuracy of reporting. As part of this process, ORIA staff have worked with a subcommittee of the Regulation and Discipline



(RAD) Committee to review possible legislative changes regarding ADR reporting requirements. In addition, this subcommittee has discussed additional measures of discipline system efficacy, beyond the backlog, which might be appropriate for the Bar to analyze and report.

**Completed.** The Bar completed a statutorily-mandated Backlog Report in May 2016. That Report identifies additional staff necessary to achieve various backlog reduction goals. The Bar submitted a request for funding needed to implement the case processing targets identified in the Backlog Report in its supplemental Supreme Court petition, filed in October 31, 2016.

**Completed.** With the creation of ORIA, the Bar has established a dedicated data and research arm. ORIA staff has begun automating the extraction, transformation and reporting of discipline system data to ensure greater accuracy and reliability in the data. ORIA staff has also begun a redesign of the monthly reports on the discipline system that are sent to the Regulation and Discipline Committee to ensure that the data are focused on public protection and more easily understood. In addition to the work being done on the data underlying the discipline system, ORIA staff will launch a workload study for the Office of the Chief Trial Counsel beginning in 2017, designed to provide for the build out of a more qualitative Backlog Report with quantitative time study data.

- d. Develop and deploy a new case management system for Office of Chief Trial Counsel and State Bar Court.

**In Progress.** The contract between the State Bar and Tyler Technologies, Inc. for the Case Management System for the Office of the Chief Trial Counsel, the State Bar Court, and the Office of Probation became effective on December 16, 2016. The Bar has hired a dedicated project manager to lead the effort; the official project kick-off will occur during the first week of February.

- e. Expeditiously refine, adopt and implement phased-in and/or modified Task Force on Admissions Regulation Reform (TFARR) recommendations.

**Completed.** The Board has taken action on all three TFARR recommendations as follows: 1) the Board adopted a new MCLE requirement for attorneys within their first year of practice, to go into effect February 2018. Under this new requirement, attorneys will have to complete 10 hours of State Bar-prescribed MCLE during their first year of practice; 2) the Board referred the question of pre-admission competency training requirements to the Committee of Bar Examiners (CBE), specifically asking the CBE to consider application of the ABA's 6-hour competency training requirement to California



accredited and unaccredited schools and CBE report back to the Board of Trustees at the Board's July 2017 meeting; and 3) the Board deferred action on TFARR's pro bono recommendation given the pendency, and subsequent veto by Governor Jerry Brown, of a similarly constructed statute.

- f. Manage the review, recommendation for Supreme Court adoption, and promulgation of new Rules of Professional Conduct as prepared by the Rules Revision Commission.

***In Progress.*** At its June 23, 2016 meeting, the Board of Trustees voted to send the Rules Revision Commission's comprehensive set of 68 proposed rules out for 90-day public comment. After the end of the comment period, the Commission reviewed the public comments received. The Commission revised some of the proposed rules and left others unchanged. At the Board's November 17, 2016 meeting, the Board considered the Commission's recommendations. The Board adopted 36 proposed rules and authorized an additional 45-day public comment period for 34 proposed rules. These 34 rules included two new proposed rules drafted by the Commission after the original set of 68 rules were sent out for public comment. The 45-day public comment period ended on January 9, 2017. The Commission will review the comments received at its January and February meetings. It is anticipated that the Board will consider the Commission's final recommendations at the Board's March 9 -10, 2017 meeting.

Rule 5-110, requiring that prosecutors disclose exculpatory evidence, regardless of its materiality, was submitted to the Supreme Court on January 9, 2017. Although it has been docketed, the Supreme Court has yet to act on it.

- g. Complete full implementation of the Auditor's 2015 recommendations.

***Completed.*** As of March 2016, the State Bar had implemented all seventeen of the State Auditor's 2015 recommendations.

- h. Consider and implement the most effective mechanism for ensuring compliance with MCLE requirements.

***In Progress.*** At their joint March 2016 meeting, the Admissions & Education and Regulation and Discipline committees, adopted MCLE Compliance Audit financial penalties. Specifically the Committees approved the assessment of a standard MCLE noncompliance fee of \$75 to those members selected for MCLE Audit whose audit submission is filed after the initial audit deadline and an



additional MCLE Audit Deficiency Fee of \$200 to be applied to those members selected for MCLE Audit whose audit submissions are deficient by any number of hours. Additionally, staff reported to the Trustees that going forward only the most egregious cases, where there was evidence of dishonest reporting, would be referred for review to the Office of the Chief Trial Counsel.

In addition, staff has advanced a workforce planning recommendation to require MCLE providers to electronically report attendance directly to the State Bar. Meetings have been held with MCLE providers to discuss issues to be considered in a transition to this new reporting process, as well as the functional requirements for an online system that would serve as the reporting platform. Deployment of such a platform would preclude the need for the Bar to perform manual audits, and enable 100 percent audit coverage, thus enhancing the Bar's regulatory oversight of attorney compliance with MCLE requirements. Given a number of other competing IT initiatives, this project is still in a planning phase.

## Goal 2. Proactively inform and educate Stakeholders about the State Bar's responsibilities, initiatives, and accomplishments.

- a. Develop and implement a Communications Strategy Plan for timely and effective external and internal communication.

**Ongoing.** The Office of Communications will develop a strategic communications plan following the 2017 Board Strategic Planning retreat, to ensure that priorities are in alignment. The communications plan and accomplishments in 2016 include:

- Media relations: increased communication with statewide and regional reporters to share updates on attorney discipline in their geographic area.
- Promotion of attorney ethics rules revision process to reporters and the public, resulting in widespread media coverage in the Associated Press, LA Times, Capitol Public Radio, Huffington Post, and KQED radio.
- Expanded consumer know your rights outreach regarding about preventing UPL fraud (see more below).
- Reducing the delays in monthly reporting on attorney discipline in the California Bar Journal so that the information is up to date on attorneys who have been disbarred, suspended, or put on probation.



- Editorial strategy for the California Bar Journal to better align articles and coverage with the State Bar’s public protection mission.
- Concluding a long-standing advertising contract in the California Bar Journal: this will help ensure that the State Bar’s online publication aligns with the agency’s public protection mission and regulatory function. The advertising will conclude in December when the contract expires.
- Internal communications: more frequent direct updates to staff from State Bar leadership to ensure that staff are informed about major items impacting the Bar. Additionally, we have improved the timeliness and frequency of communication with the Board of Trustees.
- Social media: increased information shared with the public and attorneys via the State Bar’s social media channels to reach both the public and attorneys. This includes information about attorney discipline, the Client Security Fund, consumer know your rights information, and more.
- Promoting consumer know your rights information, including how to protect yourself from fraud, how to find an attorney, and how the State Bar can help in the case of attorney misconduct.
- Overhaul of State Bar website (see below).
- Launched an electronic legislative newsletter to provide district specific information about attorney discipline and State Bar resources to every legislative district, as a resource to staff and constituents.
- Implemented CPRA
- Launched regular Board Blasts to update the Board of Trustees via email.
- Increased email communication to all staff regarding at key moments, such as the fee bill process.
- Built a bank of talking points and messages regarding issues related to the State Bar and the work of the agency.



- b. Manage and support the 2016 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 Bar-wide.

**Completed.** The 2016 Governance in the Public Interest Task Force (GIPITF) report included a number of recommendations for reform. Although many of these could not be effectuated absent statutory change, several could be implemented by actions of the Board of Trustees. On September 12, 2016, those GIPITF recommendations that could be advanced by the Board were considered as well as suggested next steps as related to their implementation. They included: (1) Establishment of an enhanced orientation and training for State Bar Trustees; (2) Assessing key reporting relationships, assigned to the Regulation and Discipline Committee for report back to the Board at its January 2017 planning meeting; (3) Further clarification of the Bar's Public Protection Mission, assigned to the Executive Committee for report back to the Board at its January 2017 planning meeting; (4) Addressing the impacts of "Silo Funding," assigned to the Stakeholders, Access to Justice, and Appointments, and Planning and Budget Committees for report back to the Board at its January 2017 planning meeting; and (5) Determination of funding adequacy for the State Bar Discipline System, assigned to the Planning and Budget Committee, with progress reports to be provided to the Board at each of its meetings. Other recommendations were deferred for subsequent study or legislative action.

**Ongoing.** The Office of General Counsel continues to provide guidance on, and to monitor compliance with, both the California Public Records Act and Bagley-Keene Open Meeting Act. The office has implemented processes throughout the agency to ensure compliance and provided ongoing advice and ad hoc training as needed to the State Bar's staff, standing committees, section executive committees, and special committees, boards and commissions. The Board of Trustees, with the advice of the Office of General Counsel, continues to revise its operating procedures to align the requirements of the Open Meeting Act with its duties as a regulatory body.

- c. Redesign the State Bar website to improve access, legibility and utility for all stakeholders.

**In progress.** The website redesign is to be completed in May 2017. The vendor, Project 6, has created page mockups which have been reviewed by staff to ensure the design and navigation meets departmental needs and goals. The designs will be fully mobile responsive (which will allow for easier navigation for both attorneys and the public, and better serve individuals who only have internet access via their mobile phones), and more accessible to people with visual impairments and other disabilities. A beta version of the website is expected to be available for stakeholder review, including the Court, in April.



The website overhaul will include greater language access, particularly for information geared to the public, for the top 6 languages spoken in California.

The State Bar Court will also update its website in 2017 to match the new look and feel of the main State Bar website.

- d. Continue to play an appropriate role in preventing and remediating 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.

***In Progress.*** Developing a fact sheet regarding the Bar's role and authority to address, help prevent, and information Californians about notario fraud and other unauthorized practice of law issues.

The fact sheet outlines that State Bar of California addresses the problem of unauthorized practice of law (UPL) in these key ways:

- New UPL protocol, intake + investigation procedures
- Immigration hotline (English and Spanish, currently)
- Referring cases to law enforcement for prosecution
- Taking over the practice of UPL scammers
- Consumer know your rights information
- Close coordination with law enforcement
- Outreach to impacted communities

In 2016 OCTC staff in the Intake Unit received more than 580 new Unauthorized Practice of Law (UPL) cases while closing or forwarding to the Enforcement Unit over 850 of these cases. 180 of these complaints were related to immigration.



Also in 2016, the Bar hosted a UPL summit, which focused on how the Bar can more effectively partner with legal service organization on the identification, reporting, and investigation of UPL, particularly as related to vulnerable immigrant communities. After that summit, Bar leadership attended a statewide meeting of California District Attorneys to discuss more effective partnerships with law enforcement in the prosecution of UPL.

Staff in the Office of Communications paired with OCTC staff to update and promote consumer know your rights information about unauthorized practice of law. This resulted in a series of interviews with the Univision TV station in Fresno – reaching monolingual and bilingual Spanish speakers and immigrant communities in the Central Valley.

The Office of Communications is developing plans to reach out to other Spanish language media and ethnic media with this information about how people can avoid notario and UPL fraud, and what to do if it happens. A recent [Voice of OC article](#) highlighted the Bar’s resources in this area. The updated State Bar website (see more below) will also feature more accessible and streamlined consumer know-your-rights information. This information will be multilingual (available in the top 6 languages spoken in California) and will include a feature on avoiding UPL fraud and how to file a non-attorney complaint.

OCTC has implemented a new protocol to assure the efficient tracking and handling of complaints about non-attorneys engaged in UPL. A new, dedicated UPL team evaluates and investigates UPL complaints to determine whether there is a remedy within the Bar’s statutory authority that OCTC can pursue. OCTC has expedited UPL referrals to law enforcement and other enforcement authorities, and increased the number of such referrals over the past year. In addition, OCTC has improved communications with the U.S. Citizenship and Immigration Services and the U.S. Executive Office for Immigration Review to refer ethics complaints about attorneys who represent clients in immigration matters, but are not licensed in California.

### Goal 3. Improve fiscal and operational management, emphasizing integrity, transparency, and accountability.

- a. Complete the Workforce Planning and Classification and Compensation Studies. Develop and implement action plans to improve personnel and fiscal resource utilization.

See Goal 1. a. and b. above.



- b. Improve productivity through performance accountability, training, and professional development.
- c. Improve staff morale and career satisfaction through recognition of performance, career path development, and transparent and collaborative communication.

***In Progress.*** A voluntary employee survey was issued in late 2015. The goal of the survey was to identify the most pressing issues facing the State Bar’s work force, ways to improve efficiency, and to increase employee job satisfaction and performance. Nearly 100% of the workforce responded to the survey. The survey responses revealed a high level of employee commitment to the important work of the State Bar. The responses also identified areas for improvement in training, work distribution, and clarity of performance standards.

In 2016, Elizabeth Parker and Leah Wilson led a multi-step effort to develop an Action Plan to address the themes and concerns raised by the survey and from other feedback and recommendations from employees. In early 2016, they hosted individual and group meetings with all executive and supervisory staff to solicit their input on employee engagement and satisfaction; the results of these conversations were reported to the Senior Executive Team, allowing the identification of several key management themes.

The Senior Executive Team held an initial half-day meeting on May 17, working with a management consultant. The goal was to draft an Action Plan to address four key themes:

- Performance Accountability;
- Recognition and Advancement;
- Training and Professional Development; and
- Effective and Transparent Communication and Collaboration.

An all-day Executive Staff Retreat followed on July 14 and focused on further refining the Action Plan. Additional meetings were held in Los Angeles and San Francisco that included all managers, supervisors, and interested line staff to solicit further input and feedback on the Action Plan. These meetings were enthusiastically received with a high level of thoughtful, constructive participation.



We are in the early phases of implementing the Action Plan, including working to improve employee orientation and training; developing training for supervisors and managers; and updating and improving the performance evaluation system.

***In Progress.*** The State Bar has recently hired a Senior Human Resources Specialist with experience in training and professional development. Responsibilities will include advancing the Action Plan for Employee Engagement including developing a training and professional development plan for State Bar employees; identifying and prioritizing staff training needs; developing and delivering training content, as well as vetting and securing external training and professional development resources; and working with individual employees in support of their identified State Bar career goals.

Additionally, as noted in Goal 1. a., Phase II of CPS HR Consulting's Classification and Compensation Analysis is nearing completion. This Phase addresses the entirety of the Bar's workforce and includes recommendations for articulated career pathways for State Bar employees.

- d. Reallocate funds to reflect expenditure review, new reserve policy, and other reengineering efforts.

***Ongoing.*** As reflected in the 2017 budget, efforts to closely examine expenditures continue. The 2017 budget includes over \$2 million in professional services reductions effectuated pursuant to this Objective.

***Completed.*** The Board adopted a new reserve policy on July 24, 2015. In 2016, the Board directed reserve spend-downs and transfers pursuant to the reserve policy.

***Ongoing.*** A number of business process re-engineering efforts are underway designed to determine the optimal way to organize work in order to maximize the efficient use of resources and outcomes. In 2016, these efforts were centered on the evaluation of how the Bar processes high-volume calls. Pursuant to the call analysis, the Bar is transitioning to a centralized call center, designed to improve efficiency and customer service. Additional reengineering efforts include a review and restructure of the Bar's collections processes.

- e. Clarify and harmonize policy and regulatory mandates impacting the Bar arising from: Statute, Changes in Board composition and leadership (including Board Book review and update), and Management policy directives.



**Partially Implemented.** The State Bar of California’s Board of Trustees Policy Manual (commonly referred to as the “Board Book”) is a compilation of statutes, Rules of the State Bar, and other policies and procedures adopted by Board resolutions that govern the operations of the Board and its oversight of the State Bar. The Board Book is intended to be a reference manual for Board and State Bar staff to readily find these various provisions. Staff has reviewed the Board Book and updated the structure, making it more user-friendly and better organized. In addition, staff is currently reviewing provisions contained in the Board Book to ensure consistency with governing statutory provisions. The ultimate goal is to make the Board Book available to the public to increase transparency and knowledge regarding the operations of the State Bar. The Board Book Phase II - Policy Review began at the Trustees’ November meeting and will continue throughout the 2016-17 Board year.

- f. 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.

**Completed.** The Office of Information Technology (IT) has developed a Three Year Technology Plan; see attached.

- g. 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.

**In progress.** State Bar staff is currently using funds from the \$10M Bank of America loan to finance renovations on two vacant floors at its San Francisco headquarters building at 180 Howard Street. The renovations currently underway will bring the floors to “warm shell” condition (major building systems in place and other landlord-required work complete), so that the floors can be leased to third party tenants and “tenant improvements” (office space build outs) can commence. Both floors are ready for tenant improvements, and if leases are signed shortly thereafter, occupancy and rent commencement will occur in spring 2017.

The 2017 budget includes \$1.7 million in capital improvement funding for the Howard Street building, representing the minimum investment needed to appropriately maintain the building.



## Goal 4. Support Access to Justice and improvements in the Justice System.

- a. Support increased funding and enhanced outcome measures for Legal Services.

**Ongoing.** Over the past year, the State Bar has been instrumental in increasing funding for legal services programs. Working with individuals and organizations across the State including the Legal Aid Association of California (LAAC), in 2016, the Bar helped secure a one-time \$5 million general fund increase in the Equal Access Fund which provides funding for legal services throughout the state.

State Bar staff, working with the California Commission on Access to Justice and the LAAC, has also been working to unlock new federal funding sources for legal aid. As a result, over \$20 million in new RFPs were issued by the California Office of Emergency Services that allowed legal services organizations to compete for funding for work with crime victims and survivors. Significantly, one of the new RFPs provided for \$10 million earmarked for legal assistance. To date, nearly \$7 million of the new funding has been awarded to IOLTA-funded legal services programs.

In July 2016, staff worked with the Legal Services Trust Fund (LSTF) Commission to make an additional \$3 million of bank settlement funds available for distribution through a Request for Proposal (RFP) process. Including this round of funding, a total of nearly \$12 million in grants to support legal services work in the areas of foreclosure prevention and community economic redevelopment has been awarded. Staff and the LSTF Commission are engaged in a grant planning process with approximately 80 legal services organizations to identify regional and statewide programs that could be funded with the remaining \$32 million of bank settlement proceeds.

- b. 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.

**Ongoing.** In 2016, the Council on Access and Fairness (COAF) focused on the creation of a pilot mentoring program partnering with local and minority bar associations and has identified two bar associations for the initial pilot (Alameda County Bar Association and Asian Pacific American Women



Lawyers Alliance). COAF also continued to support California Bar Foundation efforts to create a pilot bar passage program focusing on extensive essay writing skills and has developed plans to work with a team of researchers from Stanford University and Indiana University to augment the bar exam process by introducing psychological interventions to help improve the passage rate among students from diverse backgrounds. While these efforts will continue in 2017, the pace will be decelerated, as there is not currently an ongoing and sustainable funding source for this work.

In 2016, California Commission on Access to Justice efforts included working on identifying additional resources to support rural legal services and developing best practices for promoting language access in the justice system beyond the courtroom.

In 2016, the Standing Committee on the Delivery of Legal Services (SCDLS) conducted preliminary research regarding mandatory pro bono reporting and its impact on increasing pro bono service, and partnered with legal services organizations and other subject matter experts to design and facilitate free, high-quality training for legal services lawyers, pro bono counsel, and other advocates.

c. Support adequate funding of the Client Security Fund.

**Ongoing.** A request for an increase in Client Security Fund (CSF) funding was included in the Bar's Supplemental Supreme Court petition. Also in 2016, transfers of excess reserves from other Funds were made to augment the CSF, pursuant to the Board's reserve policy. Collections activity was also increased in 2016, with improved collections benefiting the CSF reserve balance.



## THE IT TECHNOLOGY PLAN (ITTP) 2017-2019

The IT Technology Plan (ITTP) identifies four goals, their respective objectives, and key strategies. The ITTP focuses on strategies pivotal for creating the effective use of existing and emerging technologies. We will strive to balance “commodity” IT services that are vital for smooth day-to-day operations and leveraging new, innovative technological solutions.

The ITTP provides strategic and tactical ideas based on a high-level framework. It does not address the resource needs; it is understood that new resources and the re-allocation of some existing resources will be required to execute strategies and accomplish projects identified in the plan. The effectiveness of any strategic plan also requires careful and timely execution; an accompanying operational plan (to be developed) outlines how the ITTP goals and objectives will be accomplished.

The ITTP is guided by four overarching strategic goals:

1. Increase Access to State Bar Services
2. Increase Efficiency, Transparency and Accountability
3. Ensure Security of Data and Systems
4. Effectively Budget, Plan, Monitor and Support IT Resources

The goals, and corresponding objectives, are outlined below. Each objective is coded to specific sub-goals that can be found on attached Goal Pillars document.



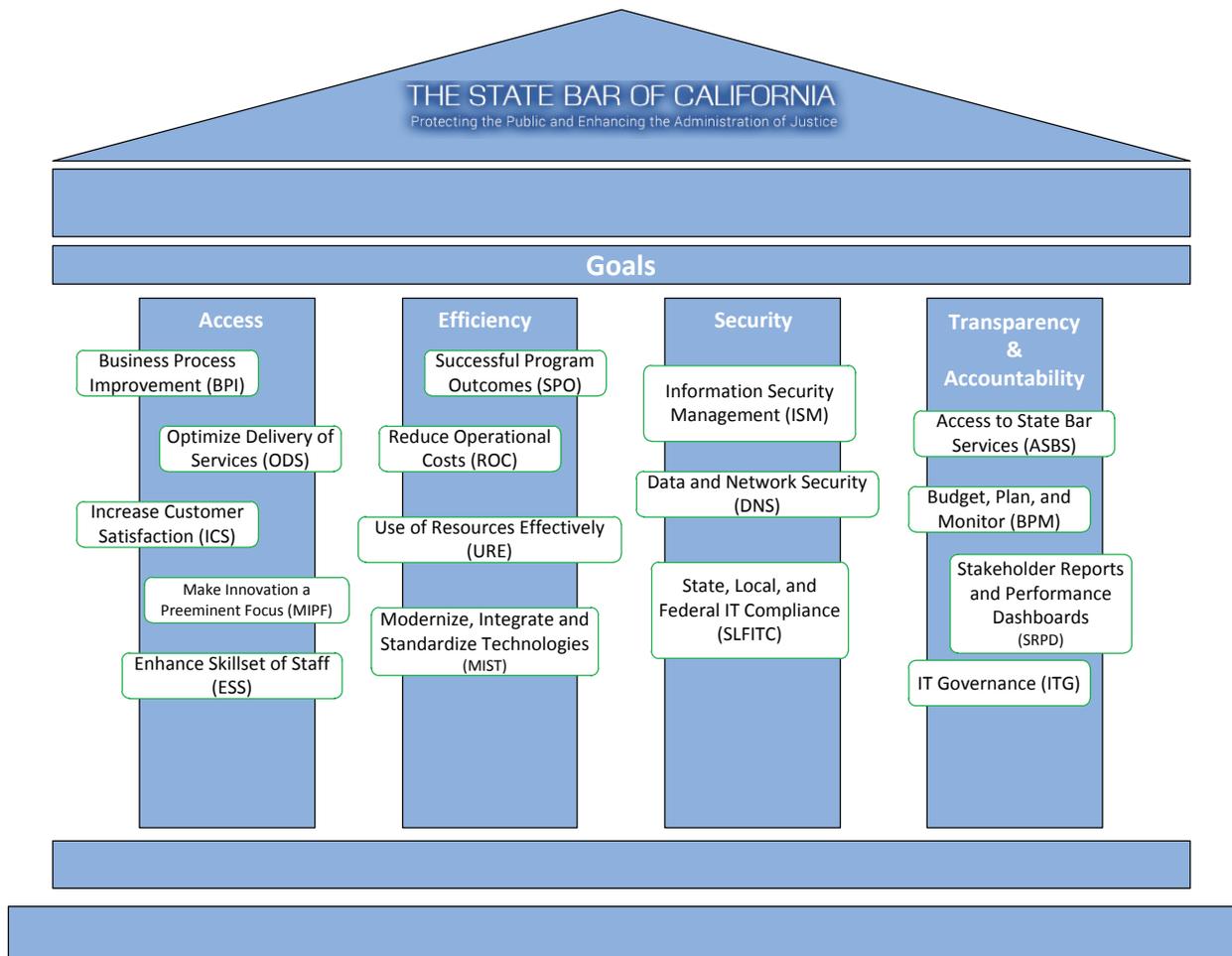
Goals	Objectives
<p>Increase Access to State Bar Services</p>	<ol style="list-style-type: none"> <li>1. Web Redesign (ICS, ODS, ROC, ASBS)</li> <li>2. E-Signatures (ICS, BPR, MIST)</li> <li>3. Automating paper processes not addressed through CMS (BPR, MIST)</li> <li>4. LLC, Pro-Hac Vice, etc.</li> <li>5. MyStateBar Profile Upgrade (ICS)</li> <li>6. Enhance Agency Billing (ICS, ROC, URE)</li> <li>7. MCLE Provider Reporting Platform (URE, ROC, MIST)</li> <li>8. Replace MRC System (ODS, ICS, ROC, URE, MIST, SRPD)</li> </ol>
<p>Improve Efficiency, Transparency, and Accountability</p>	<ol style="list-style-type: none"> <li>1. Develop metrics and quantitative measures to establish the effectiveness of IT projects. (ITG, SRPD)</li> <li>2. Complete System Documentation for Legacy and New Applications, and its supporting infrastructure. (SLFITC)</li> <li>3. Develop plan for transition/integration of all legacy systems. (ROC, MIST)</li> <li>4. Deploy Case Management System (ODS, ICS, ROC, URE, MIST, SRPD)</li> <li>5. Tyler Odyssey for OCTC, SB Courts, and Probation</li> <li>6. Admissions AIMS</li> <li>7. Replace the ERP (ODS, ICS, ROC, URE, MIST, SRPD)</li> <li>8. Implement critical upgrades sooner (HR Recruitment)</li> <li>9. Replace KOALA system (ODS, ICS, ROC, URE, MIST)</li> </ol>
<p>Ensure Security of State Bar Data and Systems</p>	<ol style="list-style-type: none"> <li>1. Ensure Network and Security Infrastructure is secure (ISCM, NDS)                         <ol style="list-style-type: none"> <li>a. Security Assessment and Mitigation Plan</li> </ol> </li> <li>2. Continuity of Operations (COOP) (ISCM, NDS, SLFITC)                         <ol style="list-style-type: none"> <li>a. Develop Continuity of Operations Plan</li> <li>b. IT Disaster Recovery Plan</li> <li>c. Backup and Recovery Plan</li> </ol> </li> </ol>



Goals	Objectives
Effectively Budget, Plan, Monitor and Support IT Resources	<ol style="list-style-type: none"> <li>1. Identify funding sources for approved Strategic Plan projects. (BPM, ITG)</li> <li>2. Institutionalize Ongoing Funding for Routine Technology Refresh (BPM, ITG)                             <ol style="list-style-type: none"> <li>a. Infrastructure Refresh (i.e. Desktop, Printers, Servers, Networks, etc.)</li> <li>b. Software Refresh (i.e. Microsoft, IBM, COTS, etc.)</li> <li>c. Data Center Environment</li> </ol> </li> <li>4. Leverage technologies and information resources, and explore opportunities to reduce operational expenditure. (ODS, MIPF, ROC)                             <ol style="list-style-type: none"> <li>a. Full capacity for video conferencing between LA and SF.</li> <li>b. Lower web hosting costs.</li> <li>c. Re-use/Re-purpose existing technologies where applicable.</li> <li>d. Deploy “As-a-Service” Model (SaaS, PaaS, IaaS)</li> </ol> </li> <li>5. Adequately Staff OIT (URE)                             <ol style="list-style-type: none"> <li>a. Hire staff with the right skillsets for the job.</li> <li>b. Discontinue use of contractors.</li> </ol> </li> <li>3. Enhance Staff Skillset (ESSS, URE)                             <ol style="list-style-type: none"> <li>a. Training</li> <li>b. Mentoring</li> </ol> </li> </ol>



## IT Goal Pillars

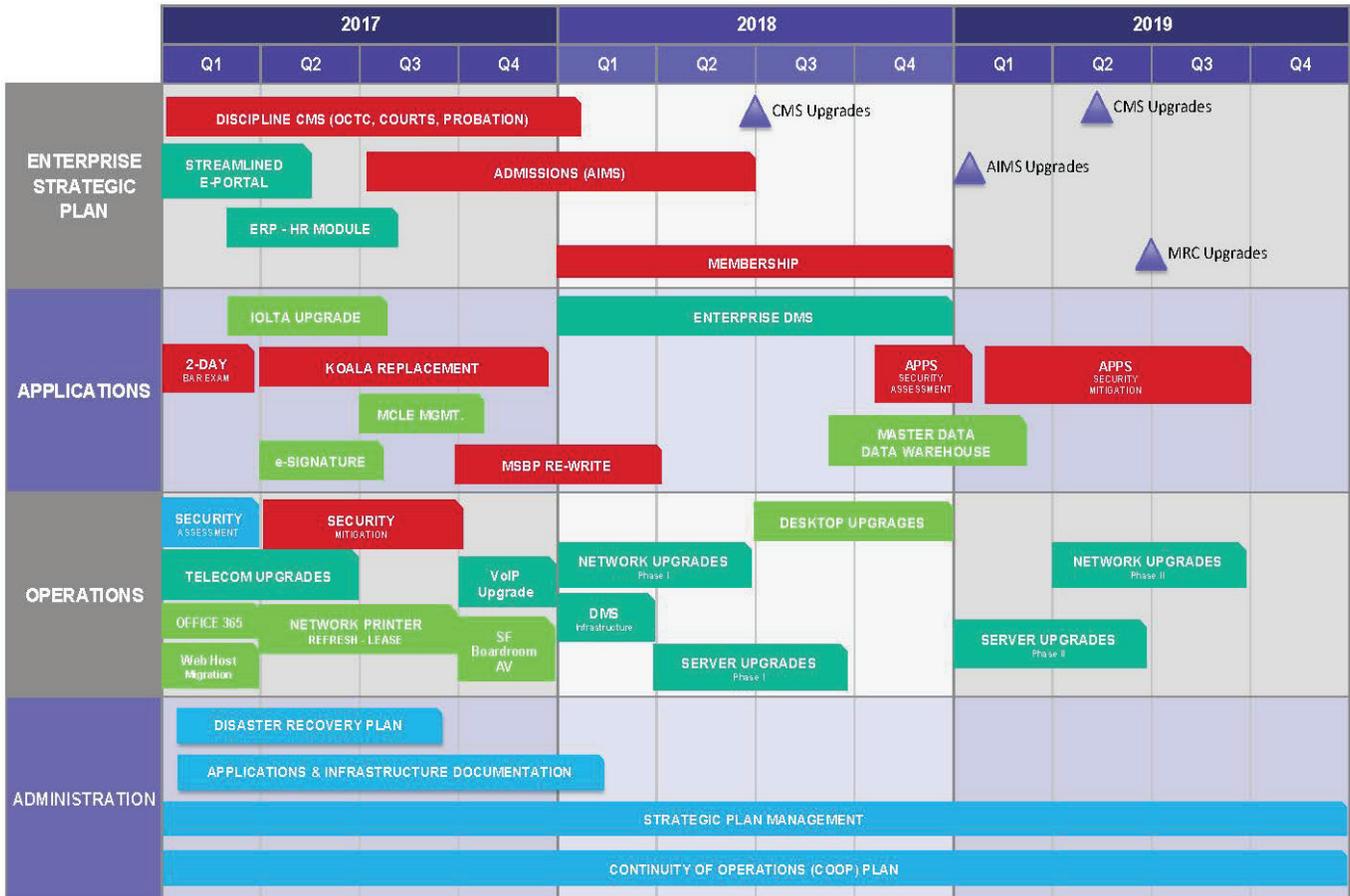




## IT Roadmap 2017 – 2019

### TECHNOLOGY ROADMAP

IMPACT KEY NO IMPACT ■ LOW ■ MEDIUM ■ HIGH ■



# Goals and Objectives 2017-2022 Five-Year Strategic Plan



**The State Bar of California**

180 Howard Street | San Francisco, CA 94105

Tel. 415-538-2221 | [www.calbar.ca.gov](http://www.calbar.ca.gov)



## GOALS AND OBJECTIVES: 2017-2022 FIVE-YEAR STRATEGIC PLAN

**Mission: Protection of the public shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. Business and Professions Code section 6001.1 (Added by Stats. 2011, Ch. 417, Sec. 1. Effective January 1, 2012.)**

### Goals and Objectives: 2017-2022

1. Successfully transition to the “new State Bar” – an agency focused on public protection, regulating the legal profession, and promoting access to justice
  - a. Manage and support the transition of the State Bar Sections to a new standalone entity.
  - b. Determine whether additional State Bar functional areas will transition to the Sections entity, other organizations, or to new standalone entities.
  - c. Implement and pursue governance, composition, and operations reforms needed to ensure that the Board’s structure and processes optimally align with the State Bar’s public protection mission.
  - d. Finalize an updated Mission Statement for the State Bar reflecting programmatic areas remaining after the transition analysis in order to improve the Bar’s focus on its public protection and regulatory functions
  - e. Determine the appropriate role of, and Board responsibility for, State Bar Standing Committees, Special Committees, Boards, and Commissions in the new State Bar.



## 2. Ensure a timely, fair, and appropriately resourced admissions, discipline, and regulatory system for the more than 250,000 lawyers licensed in California

### Attorney Discipline System

- a. Develop and deploy a new case management system for the Office of Chief Trial Counsel, State Bar Court, the Office of Probation, and the Office of Admissions for greater transparency and accountability.
- b. Implement Workforce Planning and evaluate the impact of those reforms.
- c. Develop and implement transparent and accurate reporting and tracking of the health and efficacy of the discipline system, to include: (a) completion of a workload study for the Office of Chief Trial Counsel, and the State Bar Court; (b) identification of staffing and resource needs based on the results of that study; and (c) development of new metrics for measuring the effectiveness of the discipline system including any needed revisions to the statutory backlog metric.
- d. Develop and implement new attorney MCLE requirements and evaluate their impact and effectiveness.
- e. Develop and implement an effective mechanism for ensuring compliance with MCLE requirements.
- f. Support adequate funding of the Client Security Fund.

### Admissions

- g. Implement the two-day Bar Exam and evaluate results of the new exam on pass rates and costs.
- h. Conduct Bar Exam validity and pass line studies to determine whether or not additional changes to exam content, format, administration, or grading are needed, and implement needed changes.
- i. Review special admissions rules (Multijurisdictional Practice, Pro Hac Vice, Registered In-House Counsel, Out of State Attorney Arbitration Counsel, Foreign Legal Consultants, and Practical Training of Law Students Program) to determine whether changes are needed, and implement needed changes.



### Unauthorized Practice of Law

- j. Monitor improvements in the response to complaints regarding the unauthorized practice of law through tracking and reporting on complaints received, investigation timelines, civil filings, and law enforcement referrals.
- k. Partner with law enforcement agencies to create a coordinated regional response to the unauthorized practice of law.

## 3. Improve the fiscal and operational management of the State Bar, emphasizing integrity, transparency, accountability, and excellence

- a. Implement an updated Classification and Compensation structure reflecting the results of classification and compensation analyses completed in February 2017.
- b. Improve productivity through performance accountability, training, and professional development.
- c. Improve staff morale and career satisfaction through recognition of performance, career path development, and transparent and collaborative communication.
- d. Reallocate funds to support the discipline system based on expenditure review, revenue enhancement measures, implementation of the Bar's reserve policy, and other reengineering efforts.
- e. Develop outcome and performance accountability metrics for assessing organizational and service effectiveness throughout the Bar.
- f. Implement the 2017-2020 technology plan.
- g. 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.
- h. Pursue a two-year fee bill to ensure a balance between accountability and meaningful implementation of important reforms.



4. Support access to justice for all California residents and improvements to the state's justice system
  - a. Support increased funding and enhanced outcome measures for Legal Services.
  - b. Study and implement improved programmatic approaches to increasing access to justice.
  
5. Proactively inform and educate all stakeholders, but particularly the public, about the State Bar's responsibilities, initiatives, and resources.
  - a. Develop and implement a Communications Strategy Plan for timely and effective external and internal communication about public protection goals, objectives, and accomplishments.
  - b. Develop metrics for assessing efficacy of communication and stakeholder engagement efforts and use those metrics to inform modifications to strategy.
  - c. Redesign the State Bar website to improve access, legibility, and utility for all stakeholders.
  - d. Partnering with legal service providers and others to educate vulnerable populations regarding the problem of unauthorized practice of law and ways that individual issues can be addressed.
  - e. Maintain and enhance relationships with other regulatory and enforcement agencies that share a mission of public protection.
  - f. Improve transparency by increasing the availability of meeting materials and expanding upon existing mechanisms for regular communication with the Supreme Court, Legislature, Governor's Office, and the public.

APPENDIX G

NEW TRUSTEE ORIENTATION TRAINING MODULES

## APPENDIX G

### **New Trustee Orientation Training Modules**

#### **TRAINING MODULE** – The State Bar

1. Organizational Chart
2. History of the State Bar
3. Understanding the Roles & Responsibilities of Stakeholders (Chief Justice, Legislature, Governor, Labor, Media, etc.)
4. Sub-Entities & Volunteers
5. State Bar Initiatives & Strategic Planning
6. Procedures for Complaints against the State Bar/Staff
7. Facilities Tour

#### **TRAINING MODULE** – The Board of Trustees

1. The Role of the Board, its Trustees & Officers
2. Board Committee Structure
3. Board Adopted Protocols: Interacting with Media, Legislature, State Bar Staff & Others
4. The “Board Book”
5. Financial Review: The Budget, Sources of Funding & Annual Financial Audit

#### **TRAINING MODULE**- Legal Training from the Office of General Counsel

1. Supreme Court, Legislative Oversight & Separation of Powers
2. Antitrust, including State Bar Antitrust Policy
3. Bagley Keene Open Meeting Act
4. California Public Records Act
5. Fiduciary Duties (Bus. & Prof. Code, §§ 6001.1 & 6030)
6. State Bar Rules Applicable to Trustees and Officers (e.g., State Bar Rules 6.20 & 6.40)
7. Conflict of Interest & Form 700 (Gov. Code, §1090 & Bus. & Prof. Code, § 6036)
8. Travel, Reimbursement & Stipend Request Forms
9. Labor Relations

#### **OTHER**

1. Discipline Day – The Discipline System
2. Admissions Day – The Admissions System – Application, Licensing, Certification, Moral Character, Examinations, Special Admissions

APPENDIX H-1

DRAFT TRUSTEE SKILLS MATRIX

## APPENDIX H-1

### Draft Trustee Skills Matrix

The State Bar Board should annually review the skills and experience of the Board, and provide a recommendation of desired skills based on current composition as well as anticipated departures due to term limits.

Below is an illustrative matrix. As the experience and skills of current directors is finalized, the matrix will be updated with names and related experience.

	Governance & Board Leadership	Financial & Audit	Operations Management	Public Admin	Legal Practice	Legal Services	Ethics	Talent & Human Resources	Diversity
Trustee 1	√				√			√	
Trustee 2			√	√		√			
Trustee 3	√				√				√
Trustee 4		√						√	
Trustee 5	√				√				
Trustee 6			√		√				
Trustee 7			√		√				
Trustee 8		√		√					
Trustee 9					√	√	√		
Trustee 10	√		√					√	
Trustee 11			√		√				
Trustee 12				√				√	√
Trustee 13					√				
Trustee 14					√		√		
Trustee 15					√				
Trustee 16	√				√				
Trustee 17				√				√	
Trustee 18					√				

APPENDIX H-2

TRUSTEE SKILLS INVENTORY SURVEY

## The State Bar of California Board of Trustees Skill Inventory Survey

### Introduction

**Thank you for your service to the State Bar of California.**

**The Board of Trustees is an essential part of the State Bar's mission to protect the public; to advance the ethical and competent practice of law; to promote greater access to, and inclusion, in the legal system; as well as provide oversight to the primary functions of licensing, regulation and discipline of attorneys. As part of our effort to build a strong Board and a strong governance system for the State Bar, we are asking Trustees to share views on required Board skills. We will use your responses to build board development plans.**

**We ask that you complete this survey at your earliest convenience.**

**Thank you for your participation.**

1. Name

APPENDIX H-2

2. Looking toward 2018 and beyond, please identify which competencies and skills will be most important for the State Bar over the next five years. Use the rating scale from 1 (Unimportant) to 5 (Essential Strength). Please choose only 5 Essential Strength ratings.

	Unimportant		Moderately Important		Essential Strength
Governance and Board Leadership: Clarifying Vision and Mission; Setting and Monitoring Goals; Committee Leadership; Board Performance	<input type="radio"/>				
Financial: Accounting, Finance, Investment, Risk Management, Audit	<input type="radio"/>				
Public Finance: understanding financial guidelines and constraints on public funding and spending, experience with state and judicial policies	<input type="radio"/>				
Operational & General Management: Planning, Budgeting, Oversight; Company Policy	<input type="radio"/>				
Public Administration: experience with government administration, managing government entities, budgets, state or local government experience	<input type="radio"/>				
Legal Ethics: experience with rules of professional conduct, COPRAC	<input type="radio"/>				
Legal Services: experience with provision of services to public, services to immigrants, unauthorized practice of law, and related	<input type="radio"/>				
Practice Experience: Appellate, Administration, Prosecution/DA, Public Defense	<input type="radio"/>				
Legal Academics: experience in law schools such as teaching, administration, the Law School Council	<input type="radio"/>				
Bar Association and/or volunteer experience in State Bar activities	<input type="radio"/>				
Stakeholder Relations & Network (regulators, government sponsors)	<input type="radio"/>				
Economic and National trends, including emerging issues potentially relevant to the practice of law and public services	<input type="radio"/>				
Regulatory Law and Processes: experience in operation of professional regulatory agencies	<input type="radio"/>				
Communications/Stakeholder Relations: making the State Bar purpose and role clear to the broader population	<input type="radio"/>				
Talent and Leadership Development, including Executive Director evaluation and executive succession	<input type="radio"/>				
Labor Relations: collaborating successfully in a union environment	<input type="radio"/>				
Diversity: membership in historically under-represented groups, including diversity of background, years of practice, ethnicity, gender, etc.	<input type="radio"/>				

Other skills (please specify) and general comments:

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3. In which of the following areas do you have specific experience or knowledge? Please check up to 7 areas that you feel most able and willing to contribute in.

- Governance and Board Leadership: Clarifying Vision and Mission; Setting and Monitoring Goals; Committee Leadership; Board Performance
- Financial: Accounting, Finance, Investment, Risk Management, Audit
- Public Finance: understanding financial guidelines and constraints on public funding and spending, experience with state and judicial policies
- Operational & General Management: Planning, Budgeting, Oversight; Company Policy
- Public Administration: experience with government administration, managing government entities, budgets, state or local government experience
- Legal Ethics: experience with rules of professional conduct, COPRAC
- Legal Services: experience with provision of services to public, services to immigrants, unauthorized practice of law, and related
- Practice Experience: Appellate, Administration, Prosecution/DA, Public Defense
- Legal Academics: experience in law schools such as teaching, administration, the Law School Council
- Bar Association and/or volunteer experience in State Bar activities
- Stakeholder Relations & Network (regulators, government sponsors)
- Economic and National trends, including emerging issues potentially relevant to the practice of law and public services
- Regulatory Law and Processes: experience in operation of professional regulatory agencies and related
- Communications/Stakeholder Relations: making the State Bar purpose and role clear to the broader population
- Talent and Leadership Development, including Executive Director evaluation and executive succession
- Labor Relations: collaborating successfully in a union environment
- Diversity: membership in historically under-represented groups, including diversity of background, years of practice, ethnicity, gender, etc.
- Other skills (please specify) and general comments:

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4. In which California Appellate District do you reside and work?

- District 1: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Solano, and Sonoma.
- District 2: Los Angeles, San Luis Obispo, Santa Barbara and Ventura.
- District 3: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yolo and Yuba.
- District 4: Imperial, Inyo, Orange, Riverside, San Bernardino, and San Diego
- District 5: Fresno, Kern, Kings, Madera, Mariposa, Merced, Stanislaus, Tulare, and Tuolumne.
- District 6: Monterey, San Benito, Santa Clara, and Santa Cruz.
- Other (please specify)

5. General Capacity - what is do you anticipate in terms of time commitment, scheduling flexibility, type of engagement, this year and into future years? Are you interested and able to:

- Serve on a Committee (which committees)
- Chair a Committee or Council (which, time frame)
- Propose potential board members opposite given criteria
- Mentor new board members
- Attend a management briefing (one-on-one, small group, webcast)
- Participate in a strategy based working group, on a specific assignment
- Serve as an ambassador for the State Bar
- Hold meetings with government or elected officials to discuss policy priorities

Comments on general capacity and interests:

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6. How many days can you commit to during the coming year?

- 8 or less
- 9 - 20
- 20 - 40
- 40+
- Other (please specify)

7. Are there specific elements of board service you prefer not to participate in?

8. How much longer would you like to serve on the State Bar board?

- 0-1 years
- 2-3 years
- 4-6 years
- 7 or more years
- Comments

9. Do you have any other comments on board skills and composition?

## APPENDIX I

### REVIEW OF SUB-ENTITIES: BACKGROUND AND RECOMMENDATIONS

## APPENDIX I

### Review of Sub-Entities: Background and Recommendations

#### *Committee of Bar Examiners (CBE)*

Background: CBE is legislatively directed to:

- Examine applicants for admission to practice law; administer admission requirements; and certify applicants meeting the admission requirements to the Supreme Court. These responsibilities include:
  - Determining eligibility of applicants for admission including whether an applicant possesses good moral character requisite to the practice of law;
  - Developing and administering the bar examination; and
  - Determining appeals from administrative denial of test accommodations.
- Accredit, regulate and oversee non-American Bar Association accredited California law schools.
- Register, regulate and oversee unaccredited law schools in California.

CBE is a working committee, responsible for administering the admissions process, although the Supreme Court retains ultimate authority for admissions.<sup>1</sup> CBE is an advisor to the Supreme Court,<sup>2</sup> aiding the Court in deciding on admissions to the Bar.<sup>3</sup> CBE's workload is large, diverse and significant; its moral character workload alone is substantial.

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<sup>1</sup> "Upon certification by the examining committee that the applicant has fulfilled the requirements for admission to practice law, the Supreme Court may admit the applicant as an attorney at law in all the courts of this state and may direct an order to be entered upon its records to that effect." (B&P Code, § 6064.) "Any person refused certification to the Supreme Court for admission to practice may have the action of the board, or of any committee authorized by the board to make a determination on its behalf, pursuant to the provisions of this chapter, reviewed by the Supreme Court, in accordance with the procedure prescribed by the court." (B&P Code, § 6066.)

<sup>2</sup> The court in *Levanti v. Tippen* (1984) 585 F.Supp. 499, 504 held:

Admission to the practice of law in California is an exercise of the inherent judicial power of the California Supreme Court. Cal. Bus. & Prof. Code §§ 6064-6066. The State Bar of California is a constitutional agency established as a public corporation in the judicial branch of government. Cal. Const. Art. VI, § 9; Cal. Bus. & Prof. Code § 6001. As such, the State Bar is an arm of the California Supreme Court which assists that court in the judicial function of bar admissions. See *Emslie v. State Bar*, 11 Cal.3d 210, 224, 113 Cal.Rptr. 175, 520 P.2d 991 (1974); *Brotsky v. State Bar*, 57 Cal.2d 287, 300-01, 19 Cal.Rptr. 153, 368 P.2d 697 (1962). Likewise, the Committee of Bar Examiners is established pursuant to state law, Cal. Bus. & Prof. Code §§ 6046, 6064, to operate as an administrative arm of the California Supreme Court. *Chaney v. State Bar*, 386 F.2d 962, 966 (9<sup>th</sup> Cir. 1967); 57 Ops.Cal. Att'y Gen. 583, 584 (1974). ... [CBE] is specifically authorized to determine the form and content of the bar exam, including the passing score and the standards and methods of grading. Cal. Bus. & Prof. Code §§ 6046, 6047, 6060(f), 6060(g), 6062(d). The Committee certifies applicants for admission to the California Supreme Court, but such a recommendation is purely advisory, *Chaney v. State Bar*, *supra*, 386 F.2d at 966, and like all other decisions of the Committee is subject to review by the California Supreme Court. Cal. Bus. & Prof. Code § 6066.

<sup>3</sup> The California Supreme Court in *In re Garcia* (2014) 58 Cal.4<sup>th</sup> 440, 451-452, 446, 465, and footnote 11 held:

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The Board's role in the admissions process is limited. Created by statute, the 19 member CBE includes 10 Board appointed positions, three positions appointed by the Governor, and the remaining six by the two Legislative Houses.<sup>4</sup> The Board, in establishing the budget for the entire State Bar, determines the operating costs for CBE itself as well as all the staff that support CBE. The Board also fixes application fees payable by applicants for admissions, approves CBE's rules and regulations, and may initiate investigations into admissions matters, but has no power to administer the admissions process, which by statute resides with CBE subject to the Supreme Court's ultimate authority over admissions.

The 2017 Governance in the Public Interest Task Force (Task Force) noted the Board's limited engagement in CBE's work, and the appearance that CBE acts independently, perhaps on account of its statutory authority, in matters that should come to the Board's attention, such as public statements made on behalf of the State Bar and important policy considerations with significant implications on the State Bar's exercise of its licensing responsibilities. The Task Force recommended strengthening the Board's relationship with CBE. The Task Force also noted CBE's large volume of work and range of functions, some arguably more suited for staff or outside entities. For example, a professional accreditation agency may handle better CBE's law school accreditation function; similarly, staff may be positioned better to review various administrative processes (e.g., examination refund requests). Reducing CBE's administrative workload would make time and resources available for broader policy issues.

Accordingly, the Task Force recommends that the A&E Committee take the following action:

- Better define CBE's relationship with the Board.
- Develop a plan for meaningful engagement between CBE and the Board.
- Study the feasibility and desirability of outsourcing the law school accreditation function.
- Study the feasibility and desirability of having State Bar staff perform certain functions currently performed by CBE.

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Although both the Legislature and this court possess the authority to establish rules regulating admission to the State Bar, under the California Constitution this court bears the ultimate responsibility and authority for determining the issue of admission. ... [CBE is] the entity within the State Bar ... that administers the California bar examination, investigates the qualifications of bar applicants, and certifies to this court candidates it finds qualified for admission to the State Bar ... [CBE] makes an initial [moral character] determination, on a case-by-case basis, whether an applicant has met his or her burden of establishing good moral character, but this court retains the authority to independently review and weigh the evidence or moral fitness and to make the ultimate determination whether the applicant has satisfied this requirement. ... [CBE] makes recommendations to this court regarding the admission of individual applicants (Bus. & Prof. Code, § 6046), but this court makes the ultimate decision on admission pursuant to the court's constitutional authority over the practice of law in California. (See, e.g., *Brydonjack v. State Bar* (1929) 208 Cal. 439, 445-446, 281 P. 1018.)

<sup>4</sup> "The board may establish an examining committee ... ." (B&P Code, § 6046.)

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The statutory authority governing CBE's responsibilities combined with the Supreme Court's ultimate authority over admissions makes imperative that the A&E Committee confer with the Legislature and the Supreme Court to obtain their views on these areas of concern. CBE's unique relationship to the Supreme Court requires careful coordination with the Court on any study, endeavor or initiative to reform the role of the CBE in the admissions process or in the regulation of law schools.

Recommendation: Refer to the A&E Committee for further study, as outlined above.

### *Law School Council*

Background: CBE is statutorily required to communicate and cooperate with this council on the content and format of the bar examination, and law school education and curriculum relating to the bar examination process. The council is composed of law school deans appointed by the Board, CBE appointees and the chair of the A&E Committee. It functions as a de facto advisory body to the CBE designed to facilitate communication between the legal education community and the State Bar, and is convened upon request by CBE. The Task Force recognizes the importance to the State Bar of maintaining a formal relationship with law schools, but the current mechanism is of limited benefit. No mention of the council appears in the Board Book, and there is no explicit Board oversight mechanism to ensure that the Board knows what the council does or whether it is performing its function effectively. A better conceptualization of the role of the council is needed, formally bringing the council within the State Bar organizational structure as a CBE advisory committee. The A&E Committee should consider, with advice from General Counsel, such realignment. In the meantime, given the statutory requirement for communication and cooperation between CBE and the council, the Board should continue council appointments.

Recommendation: Refer to the A&E Committee for further study, as outlined above.

### *California Board of Legal Specialization (CBLS)*

Background: The Supreme Court adopted a rule directing the State Bar to establish and administer a legal specialization certification program. CBLS has functional oversight responsibility for the State Bar's program, which certifies legal specialists in 11 areas of law, assisted by an equal number of specialty advisory commissions in the respective substantive areas covered by legal specialization exams. Each advisory commission is responsible for reviewing applications for certification, and drafting and grading the specialty examinations in its specialty area. The advisory commissions are responsible to CBLS; the Board of Trustees has historically appointed members to both CBLS and the advisory commissions.

At its November 18, 2016, meeting, the Board directed staff to work with the SS&A Committee to modify the appointments process for the 11 advisory commissions. As modified, the advisory commission members will be appointed, and officers selected, by CBLS, not the Board, thus folding the advisory commission function into the overarching umbrella of CBLS and

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eliminating 11 separate sub-entities subject to direct Board appointment and oversight. The change in the appointment process will result in a reduction in Board time spent on appointments, and also in a reduction in staff time spent on preparation of Board agenda items. The addition of paid specialty examination drafters and graders, a new program feature being initiated this year, will reduce the workload of the advisory commissions. CBLS will revisit whether the advisory commissions can be reduced further in size and/or meet less frequently in light of this workload reduction.

There were differing views whether the legal specialization certification program serves 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. One idea is to reposition the function outside the State Bar in a separate independent entity. Another model would have the State Bar retain the regulatory function of reviewing the legal specialization certification process and certifying the entities that certify legal specialists. Yet another idea would bring the legal specialization certification function in-house to be performed by State Bar staff with the assistance of consultants, eliminating the need for CBLS. The Task Force believes that further study is needed to assess this question; that study should be timed to have the benefit of the results of the transition of advisory commission appointments to CBLS, as well as the introduction of paid exam developers and graders. Given that this program area was created by Supreme Court Rule, the Supreme Court's views on the Task Force's areas of concern should be obtained as a first step in any future study.

Recommendation: Refer to the A&E Committee for further study, as outlined above.

### *Client Security Fund (CSF) Commission*

Background: The Commission oversees and administers the CSF, a legislatively created victim restitution program, and decides whether to grant or deny applications for reimbursement. 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, it raises the following questions:

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

Noting that the Chief Justice instructed the State Bar to ensure CSF's "adequacy and operational efficiency," the Task Force recommends that RAD consider possible measures to increase the

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timeliness of payments to applicants with qualifying claims. The Task Force notes that the Board does not set CSF funding, which is mandated by statute, but that further work should be done to communicate the need for increased CSF funding.

Recommendation: Refer to the RAD Committee for further study, as outlined above.

### *Committee on Mandatory Fee Arbitration (MFA)*

Background: Fee disputes are the source of many disciplinary complaints; as a result, the Supreme Court considers the State Bar's MFA program to be an appropriate part of the State Bar's comprehensive discipline system. The State Bar's MFA program alleviates the burden on the court system by providing an alternative forum for resolution of fee disputes at the client's request. Ninety percent of cases that go to arbitration are resolved in that forum.

Concerns were raised regarding the risk that some local voluntary bar associations may decide they are no longer able to support the MFA program, and the effect that would have on State Bar staffing. Also, while the MFA program is a critical component of the State Bar's discipline system, questions arose as to the size and scope of the Committee, especially as related to the distribution of work between the Committee and MFA program staff.

The Committee is responsible for reviewing policies on fee arbitrations, assisting local bar association arbitration programs, issuing advisories, and evaluating and proposing legislation. Some of this work is dependent on the unique skills and abilities of Committee members who are often experts in the field of arbitration. Other aspects of the work, however, may be more administrative in nature, suitable for delegation to State Bar staff. A staff review of Committee functional responsibilities indicates that the following tasks may be appropriate for staff, as opposed to the Committee, to perform:

- Modification of training materials
- Updating arbitration awards
- Making public comment on and tracking changes in the law
  - tracking changes in case and statutory law
  - monitoring pending legislation and court cases
  - preparing proposed legislation to conform to case authorities
- Training of local bar staff
- Enforcement of awards
- Updating program materials (notices, sample fee agreement forms, guidelines, etc.)
- Local bar rule changes
- Updating case summaries

The Task Force recommends that RAD study this program area further, conferring with Committee members, staff and stakeholders as appropriate. The above description of potentially delegable work, already completed by staff, will offer a starting point. Depending on the portion

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of current work the Committee ultimately will continue to handle, a further review of the required structure and size of the Committee should also be undertaken.

Recommendation: Refer to the RAD Committee for further study, as outlined above.

### *Lawyer Assistance Program (LAP) Oversight Committee*

Background: In providing comprehensive and confidential assistance to attorneys who abuse alcohol or drugs or suffer from mental illness, LAP helps attorneys address problems with potential negative impact on client representation. The program serves the following four distinct populations:

- Attorneys who voluntarily self-refer into the program.
- Attorneys referred into the program from the disciplinary system.
- Applicants for admission referred into the program from the Committee of Bar Examiners as part of the moral character approval process (currently not covered by statute, they must be funded from non-LAP sources).<sup>5</sup>
- Applicants for admission who voluntarily self-refer into the program to avoid problems in the moral character approval process proactively by addressing substance abuse or mental illness issues lest they interfere in obtaining a license to practice law.

LAP relies on State Bar staff who are licensed clinicians to assess and develop case plans for participants. The LAP Oversight Committee may establish one or more three-member Evaluation Committees in northern and southern California, each consisting of a physician, clinician and a local State Bar member experienced in recovery. Evaluation Committees are authorized to accept or deny applications for admission to LAP; to determine completion of the program; and to terminate individuals from the program. The State Bar contracts with licensed medical health professionals in northern and southern California to facilitate weekly group meetings and monitor the recovery of participants. Notwithstanding the statutory role performed by the Oversight Committee in overseeing the operations of this program, the Board performs its own oversight role, which historically has been limited in scope. The Board appoints half of the 12 Oversight Committee members, who regularly report to the Board. On March 12, 2017, the Board approved the Oversight Committee's three-year strategic plan pursuant to Workforce Planning recommendations.<sup>6</sup>

Two issues emerged in Task Force discussions. The first centered on whether LAP is appropriately situated within the State Bar. The program goal is not in doubt, but the State Bar

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<sup>5</sup> The State Bar hopes to change the LAP statutory scheme to permit funding of applicants for admission.

<sup>6</sup> Immediately after the Task Force's discussion about LAP, the Oversight Committee presented a three-year Strategic Plan to RAD, focused on outreach (particularly to law schools and recent graduates), education, messaging and efficacy. The Oversight Committee agreed to develop a timeline for implementing the strategic plan and also agreed that physical separation from the State Bar could help to increase participation.

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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.<sup>7</sup> 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.

Additional Task Force discussion centered on the role of the program's statutory Oversight Committee and the role it plays as related to both Board oversight and program integration with the State Bar's organizational structure.

RAD should determine whether LAP should be retained within the State Bar and, if so what the relationship there should be between the Board and the Oversight Committee to RAD. Also, RAD should develop specific directives to advance the two primary components of the LAP Strategic Plan, education and program design. It is noted that LAP, its Oversight Committee and its funding are set by statute; change in its operational or governance structures, whether by transitioning the work to an independent entity to perform or by modifying the role of the Oversight Committee, will require legislation. The Task Force proposes that RAD study these issues in light of the recently adopted LAP strategic plan and that it do so by conferring with the Oversight Committee, the State Bar Court, staff, and other stakeholders.

Recommendation: Refer to the RAD Committee for further study, as outlined above.

### *Commission (2<sup>nd</sup>) for Revision of Rules of Professional Conduct*

Background: The commission concluded a two year comprehensive review and overhaul of the California Rules of Professional Conduct on March 31, 2017; the proposed rules have been approved by the Board for submission to the Supreme Court for its consideration and final approval. The appropriateness and importance of the commission's work to the State Bar, characterized by the Supreme Court as a component part of a comprehensive discipline system, is beyond question. The Board approved retaining a 'skeletal' group of commission members, should issues arise during the Supreme Court's review of the rules. TASK FORCE recommends no further action.

Recommendation: Closed.

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<sup>7</sup> Space demands in the State Bar's Los Angeles office may require LAP to relocate into separate quarters, potentially offering an opportunity to assess the impact of relocation on participant census.

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### *Committee on Professional Responsibility and Conduct (COPRAC)*

Background: COPRAC is responsible for interpreting the ethical rules governing the legal profession and issuing advisory opinions to interpret the California Rules of Professional Conduct and related authorities. The work of COPRAC falls within the State Bar's competence function, which, as noted above, the Supreme Court has characterized as an appropriate part of a comprehensive discipline system. The Task Force discussed whether constitutional and antitrust issues might be implicated by COPRAC's advisory opinions. The Task Force concluded that review of COPRAC opinions by the Office of General Counsel would be sufficient to identify and resolve such issues, should they arise.

Recommendation: Closed.

### Judicial Candidate Nominations Sub-Entities

- *Commission on Judicial Nominees Evaluation (JNE)*
- *Judicial Nominees Evaluation Review Committee (RJNE)*

Background: JNE is a legislatively created program to evaluate candidates being considered for judicial appointment by the Governor. By statute, the State Bar is required to report to the Governor in confidence its recommendation as to whether candidates are qualified for judicial office. State Bar Rules also establish an appeals process to allow candidates JNE finds unqualified for judicial office to seek reconsideration by RJNE. The Supreme Court's 2016 regulatory fee assessment order declined to fund these two committees as not related to discipline, but stated that both programs serve an important non-discipline public protection function, and encouraged the State Bar to find an alternative funding source. Notwithstanding 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. Board involvement is thus limited to annual reporting to the SS&A Committee. The Task Force recommends no further action.

Recommendation: Closed.

### Access to Justice Committees

- *Committee on Delivery of Legal Services (SCDLS)*
- *California Commission on Access to Justice (CCAJ)*
- *Legal Services Trust Fund Commission (LSTFC)*
- *Council on Access and Fairness (COAF)*

Background: SCDLS, CCAJ, LSTFC and COAF are the State Bar sub-entities focused on access to justice and diversity/inclusion goals and objectives. The work of these sub-entities is central to the State Bar's responsibility for promoting access to justice, diversity, and inclusion and

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participation in the legal system, so that all Californians, but particularly those who are low-income or indigent, might have a means to secure representation for resolution of their legal disputes and meaningful access to the courts.

State Bar support for a program of collaborative strategies and initiatives to achieve access to justice was accomplished by the Board in November 2006 when it took formal action to establish the CCAJ. Although the Supreme Court's 2016 regulatory fee assessment order did not fund CCAJ or the Center on Access to Justice (the State Bar office within the Office of Legal Services that supports CCAJ), the Chief Justice, in her letter accompanying the order, made clear that CCAJ and the Center serve important non-discipline public protection functions and are part of the Bar's overall public protection mission.<sup>8</sup> The Court encouraged the State Bar to find alternative sources of funding in the 2017 non-Fee Bill year.

Board-directed restructuring effective December 31, 2017, will incorporate the work of SCDLS into CCAJ for greater organizational efficiency. Thus, no further appointments will be made to SCDLS, and its projects will either be completed this year, or taken over by CCAJ. The Board has reserved the question whether to create two additional seats on the CCAJ and, if so, the appointing authorities for each, in light of the integration of the two sub-entities.

The Task Force identified two additional issues. First, a determination should be made as to whether the remaining sub-entities, LSTFC and COAF, should be merged into CCAJ or converted into subcommittees of CCAJ. The Senior Director from the Office of Legal Services explained that, unlike SCDLS, LSTFC serves a very specific and limited function in the administration of State Bar grants to non-profit legal services providers, which entails a large volume of work. SCDLS and CCAJ share a common broader focus on public policy creation. That commonality supports consolidating their respective functions. COAF also works at the public policy level, but with a focus on inclusion and diversity, which might be diluted, were COAF to be consolidated with other sub-entities.

The second issue raises the question of whether CCAJ and its operational independence from the Board since its creation 20 years ago may require further clarification. CCAJ is a unique sub-entity. Created by Board resolution to implement one of the recommendations contained in *And Justice for All*, the final published study of the Access to Justice Working Group, it was designed to convene broadly representative groups who could determine the best strategies for improving and supporting access to justice initiatives. CCAJ operates "under the auspices of," but with substantial autonomy from the Board. CCAJ has many diverse appointing authorities (e.g., Judicial Council, Supreme Court, Chamber of Commerce, League of Women Voters, Council of

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<sup>8</sup> The Supreme Court simply questioned, without deciding, its own constitutional authority to order an assessment that extended to non-discipline public protection functions of the State Bar. It did not question the Legislature's authority to do so, as it has done historically. The United States Supreme Court held that the State Bar may constitutionally fund activities germane to regulating the legal profession and improving the quality of legal services out of the mandatory dues of all members. (*Keller v. State Bar of California* (1990) 496 U.S. 1, 13–14.)

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County Law Librarians, etc.). The structural goal is to allow them to collaborate freely and speak with one *independent* voice. With 26 members, only 10 named by the Board, the appointing authorities historically have considered themselves to be “partners” in access to justice initiatives, not a sub-entity, subordinate to the State Bar. Nonetheless, CCAJ reports out its initiatives to the Board on an annual basis and is funded out of State Bar general funds from a budget approved by the Board.<sup>9</sup> Notwithstanding the above, there is concern about the lack of Board oversight, and clarification of the roles of and relationship between the Board and the CCAJ should be considered.<sup>10</sup>

A third concern was identified in the Task Force’s review of the State Bar’s support for access to justice and diversity/inclusion programs: the Board appears to have relegated setting priorities and taking ownership of the Bar’s access to justice agenda to the CCAJ and of the Bar’s diversity/inclusion agenda to COAF, without much engagement in that process. CCAJ and COAF thus present important additional issues for broader consideration: determining how to manage the activities of sub-entities that draw their strength and effectiveness from their independence, and determining how to incorporate access to justice and diversity/inclusion goals and objectives into all aspects of the State Bar’s public protection mission. Given the clear directive from the Chief Justice and the ongoing interest in access to justice activities by the Legislature, there can be little doubt that access to justice programs, as well as diversity/inclusion programs, are valuable, help the public, and are a vital part of the State Bar’s public protection mission. While not without dissent, the Task Force majority concluded that these programs may not relate to discipline, but they are essential to public protection and must be supported by the State Bar, rather than “spun off” into a separate independent entity.

The Task Force recommends that the Board, working with LSTFC, CCAJ and COAF, develop an appropriate operating relationship to formalize the critical ongoing relationship of the State Bar with access to justice and diversity/inclusion programs. The Task Force also recommends that the Board review how all program areas might take advantage of access to justice and

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<sup>9</sup> The budget for the CCAJ’s operating costs is \$28,600. This figure does not include extensive staff time spent supporting the CCAJ. According to the ABA, as of September 2014, 32 states plus the District of Columbia have established access to justice commissions. The most common commission model is for commission staff to be located at a partner institution, usually the courts, the state bar or a bar foundation. The ABA notes that this arrangement occasionally may create complications where staff report to the commission, but are employed by the partner institution. Also the arrangement may hamper the independence of the commission. The ABA concludes that these issues can be worked through and that this model, which is used by the State Bar, has proven to be effective in guaranteeing adequate staffing and resources, which are critical to the success of access to justice commissions. (ABA Resource Center for Access to Justice Initiatives, *Staffing an Access to Justice Commission* (April 2015).)

<sup>10</sup> Recent differences of view have been voiced with regard to CCAJ’s understanding that it need not abide by the Board Book policy requiring Board approval of amicus briefs. CCAJ is strongly of the view that to be effective, operational independence is essential, notwithstanding a need for fiscal and management support by the State Bar. Some Task Force members expressed concern about CCAJ’s perception that it may act independently from the Board’s amicus policy. In SS&A’s further study of CCAJ, these differing views should be reconciled and an understanding reached so that there is a common ground going forward.

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diversity/inclusion goals and objectives so that they become an integrated part of all public protection activities.

Recommendation: Refer to the SS&A Committee for further study, as outlined above.

### Substantive Committees

- *Committee on Administration of Justice*
- *Committee on Alternative Dispute Resolution*
- *Committee on Appellate Courts*
- *Committee on Federal Courts*

Background: Responsibility for these Committees was transferred by Board action to the Litigation Section. It is the State Bar's expectation that the work of the Committees will continue on in an independent Sections entity that includes the Litigation Section, if separation of the Sections as contemplated in the 2017 Fee Bill is approved. The Task Force recommends no further action.

Recommendation: Closed.

### *California Young Lawyers Association (CYLA)*

Background: If, as anticipated, the 2017 Fee Bill transfers CYLA to the new independent Sections entity, a future relationship between the State Bar and CYLA may include collaboration on certain limited projects, to be periodically re-evaluated, which include:

- Partnering with the LAP to develop and implement an outreach and education initiative for law students and new lawyers.
- Identifying appropriate topics for new lawyer education (e.g., the new 10-hour MCLE requirement for newly admitted attorneys, effective February 1, 2018).
- Identifying, developing, and testing web-based curricula and other modes of delivery attractive to new generations of lawyers.

That State Bar's relationship with CYLA is dependent on developments in the legislative arena. The Task Force recommends no further action.

Recommendation: Closed.

### Insurance Committees

- *Committee on Group Insurance Programs (COGIP)*

Background: COGIP monitors the State Bar sponsored group insurance programs, i.e. accidental death and dismemberment, health care, life, disability income, long term care and workers compensation. Board-directed restructuring will eliminate COGIP effective May 31, 2017.

## APPENDIX I

Responsibility for COGIP insurance products, and the State Bar's affinity programs, is expected to move to the successor Sections entity if the Legislature approves the separation of the Sections as contemplated in the 2017 Fee Bill. During the transition, oversight of the administration of these insurance products and affinity programs will shift from COGIP to State Bar staff, aided by a small number of expert consultants paid from program revenue. The Task Force recommends no further action.

Recommendation: Closed.

- *Committee on Professional Liability Insurance (COPLI)*

Background: COPLI oversees the State Bar's professional liability insurance program, designed to offer attorneys insurance coverage and provide clients with recourse for malpractice. The program includes a professional liability product for newly admitted attorneys, mediators and arbitrators liability insurance, and a business office package. To the extent professional liability insurance provides clients with recourse for malpractice, retention of this insurance program can be seen as serving a public protection function. This is countered by the argument that a professional liability insurance program principally benefits attorneys. Apart from the public protection issue is the question of how best to manage and oversee the program, a matter currently under review. The review will determine whether the program should continue to be overseen by COPLI, or instead should be overseen by a differently structured committee or State Bar staff. Until this analysis is finished, COPLI will be retained in its current form and no change in program supervision will occur to ensure continuity. Once this review is complete, RAD should determine whether the State Bar's professional liability insurance program continues to be aligned with the State Bar's public protection focus; and, if so, how best to structure its oversight and management.

Recommendation: Refer to the SS&A Committee for further study, as outline above.

### **Review of External Entities**

The State Bar's annual fee statement includes voluntary contributions to the California Supreme Court Historical Society, the Conference of Delegates, the Justice Gap Fund and the California Bar Foundation. This procedure will likely be used to collect voluntary Sections' dues if they become an independent entity as contemplated in the 2017 Fee Bill. The State Bar also makes appointments to external entities, including the American Bar Association (ABA) House of Delegates, Judicial Council, Continuing Education of the Bar (CEB) Governing Committee, and Boards of Directors for legal aid organizations funded by the Legal Services Corporation. The Task Force makes no recommendation for change here.

The 2017 Fee Bill proposes that the proposed new independent Sections entity 'assume' some of the State Bar's role in making appointments to the ABA House of Delegates and all appointments to the CEB Governing Committee, subject to approval by the external entities.

## APPENDIX I

Study of these issues is underway by State Bar staff as part of the work to achieve a successful separation of the Sections if the Legislature so approves. No significant problems are anticipated.<sup>11</sup> The Task Force recommends no further action.

Recommendation: Closed.

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<sup>11</sup> State Bar staff has in fact learned that if the Sections separate, they will be entitled to their own independent ABA delegates, determined by ABA formula. These will be in addition to those the State Bar supports. Meanwhile conversations with CEB and the State Bar staff have begun. In the event the Legislature approves the separation of the Sections from the State Bar, it is anticipated that the CEB and the new independent Sections entity will enter into their own memorandum of understanding. That will be in addition to any new memorandum of understanding between the State Bar and CEB.

APPENDIX J

LETTER FROM CHIEF JUSTICE RE INTERIM REGULATORY ASSESSMENT

APPENDIX J



*Supreme Court of California*

350 McALLISTER STREET  
SAN FRANCISCO, CA 94102-4797

TANI G. CANTIL-SAKAUYE  
CHIEF JUSTICE OF CALIFORNIA

(415) 865-7060

November 17, 2016

James P. Fox, President  
Elizabeth Rindskopf Parker, Executive Director  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

*SENT VIA EMAIL AND U.S.P.S.*

Re: *In re Attorney Discipline System* (S237081)

Dear Mr. Fox and Ms. Parker:

I am enclosing the Supreme Court's order approving an interim special regulatory assessment. As you will see, the court set a baseline assessment of \$297 per active member to fund the State Bar's disciplinary system. This amount includes funding of all discipline-related functions included in the 1998 assessment ordered in *In re Attorney Discipline System* (1998) 19 Cal.4th 582. The amount also includes funding for those activities of the Office of Communications and the California Young Lawyers Association that benefit the discipline system or are aimed at improving attorney competence and ethical compliance. Such services are sufficiently analogous to those the court funded in 1998, and will be in especially high demand in 2017 given the likelihood that new and revised Rules of Professional Conduct and new MCLE requirements for new attorneys will become effective next year. Finally, the amount includes a \$9 per active member assessment to permit the State Bar to implement the statutorily mandated workforce plan, and a \$5 assessment that accounts for lost revenue attributable to the application of the State Bar's fee waivers and scaling rules.

The Supreme Court reserves the question of whether our constitutional authority to order an assessment extends to funding the nondiscipline, public protection functions of the State Bar, including those of the Commission on Judicial Nominees Evaluation (JNE), the Center on Access to Justice (Center), and the California Commission on

November 17, 2016

Page 2

Access to Justice (Commission). The court acknowledges the State Bar's highest priority is protection of the public, and that this objective may be achieved not only through its discipline system, but also through the State Bar's administration of these types of programs, which work to ensure the integrity and effective functioning of the legal system. For the coming year, however, the court declines to provide funding for JNE, the Center, and the Commission and strongly encourages the State Bar to identify alternate funding sources to support these and other high priority, non-disciplinary activities.

As for the identified add-on assessments to fund implementation of the 180-day backlog targets, to support gap funding for the case management system and the enterprise resource planning system, and for additional revenue for the Client Security Fund, the Supreme Court did not provide funding for the reasons stated by Justice Lui in his special master's report, filed November 9, 2016.

Finally, the Supreme Court declined to provide funding for a discipline monitor. As you will recall, my September 8, 2016, letter to Executive Director Parker and then-State Bar President David Pasternak encouraged the State Bar seek the Attorney General's appointment of a monitor as one of several possible unilateral reforms that the State Bar could pursue before the end of the year. However, the court has concluded that a discipline monitor would not be useful at this time given the significant amount of change that the discipline system will experience in 2017, including transitioning to new workforce configurations and a new Chief Trial Counsel.

Sincerely,



Tani G. Cantil-Sakauye

cc: Hon. Edmund G. Brown, Jr., Governor of California  
Hon. Hannah-Beth Jackson, Chair, Senate Committee on Judiciary  
Hon. Mark Stone, Chair, Assembly Committee on Judiciary

NOV 17 2016

Jorge Navarrete Clerk

S237081

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Deputy**IN THE SUPREME COURT OF CALIFORNIA****En Banc**

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In re ATTORNEY DISCIPLINE SYSTEM

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## PREAMBLE

The court has reviewed the request of the State Bar of California for a special regulatory assessment, filed September 30, 2016; the supplemental submission concerning methodology of options for a special regulatory assessment to fund the State Bar in 2017, filed October 31, 2016; the special master's report regarding the request of the State Bar of California for a special regulatory assessment, filed November 9, 2016; the second supplemental submission concerning methodology of options for a special regulatory assessment to fund the State Bar in 2017, filed November 16, 2016; and all amici curiae letters and other documents lodged in this proceeding.

Pursuant to the court's inherent " 'power to regulate the practice of law, including the power to admit and to discipline attorneys' " (*In re Attorney Discipline System* (1998) 19 Cal.4th 582, 592), the court issues the following order for an interim special regulatory assessment that, in light of the particular circumstances facing the State Bar in 2017, is limited to funding the State Bar's discipline system. With this order, the court expresses no view on arguments made by amici curiae concerning the court's authority to order assessments to fund non-disciplinary functions of the State Bar. Further, the order is not intended to preclude the State Bar from collecting mandatory fees currently authorized by statute or from seeking voluntary member donations for activities not funded by the assessment.

As the State Bar Act declares, protection of the public is the State Bar's highest priority. (Bus. & Prof. Code, § 6001.1.) The court recognizes that the State Bar promotes this priority not only through the discipline system, but also through its administration of programs that support the judicial selection process and fair and equal access to justice. Because these nondiscipline programs are also critical to the integrity and effective functioning of the legal system, the court strongly encourages the State Bar to identify appropriate funding sources apart from the special regulatory assessment to apply toward the discharge of these and other high priority activities in 2017.

## APPENDIX J

### ORDER

Rule 9.9 of the California Rules of Court (rule 9.9), regarding an interim special regulatory assessment for attorney discipline, is hereby adopted, to become effective immediately, as set forth in the attachment hereto.

Pursuant to this court's inherent authority over attorney discipline and rule 9.9(c), Justice Elwood Lui is hereby appointed as special master to supervise and oversee the collection, disbursement, and allocation of assessments mandated by rule 9.9(b). The special master shall ensure that funds collected pursuant to rule 9.9 are used exclusively for the purpose of maintaining, operating, and supporting an attorney disciplinary system. It is contemplated that these funds will be used to support the Office of Chief Trial Counsel of the State Bar, including efforts to implement recently issued workforce plan recommendations from the National Center for State Courts; the Office of Probation; the State Bar Court; the Mandatory Fee Arbitration program; the Office of Professional Competence; the Office of General Counsel; the Office of Member Records and Compliance; Member Billing; the discipline-related activities of the California Young Lawyers Association; the activities of the Office of Communications in support of the discipline system; and overhead functions necessary to support the disciplinary system. The special master may evaluate these components of the disciplinary system and related expenditures, and recommend to the court that funds generated by rule 9.9 be allocated among these or other components in a particular manner.

Assessments collected pursuant to rule 9.9 shall be segregated from all other fees and revenue collected by the State Bar, and deposited into a separate account or accounts at a financial institution as determined by the special master and approved by this court. The special master shall manage the funds generated pursuant to rule 9.9, before their disbursement, as he deems appropriate. The special master and the Clerk/Administrator of the California Supreme Court each shall have authority to make disbursements from such account(s) for the limited purposes described herein. In managing and disbursing these funds, the special master shall act as an agent of this court. The special master shall be reimbursed for reasonable costs and expenses incurred in performing the duties described herein only upon the prior order of this court.

The special master may request that the State Bar provide him with information and reports as necessary, and may require audits of the State Bar's expenditures related to its disciplinary functions. The special master may implement and impose a system of reasonable financial controls on the State Bar to facilitate the discharge of his supervision and oversight duties. The special master shall report to the court regularly, and no less frequently than every three months, on collections and disbursements made pursuant to rule 9.9. At any time, he may request further guidance from or make recommendations to the court as he determines is appropriate.

APPENDIX J

This order is final forthwith.

Cantil-Sakauye

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*Chief Justice*

Werdegar

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*Associate Justice*

Chin

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*Associate Justice*

Corrigan

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*Associate Justice*

Liu

---

*Associate Justice*

Cuellar

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*Associate Justice*

Kruger

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*Associate Justice*

ATTACHMENT

**Rule 9.9 Interim Special Regulatory Assessment for Attorney Discipline**

(a) This rule is adopted by the Supreme Court solely as an emergency interim measure to protect the public, the courts, and the legal profession from the harm that may be caused by the absence of an adequately functioning attorney disciplinary system. The Supreme Court contemplates that the rule may be modified or repealed once legislation designed to fund an adequate attorney disciplinary system is enacted and becomes effective.

(b)(1) Each active member shall pay a mandatory regulatory assessment of two hundred ninety-seven dollars (\$297) to the State Bar of California. This assessment is calculated as the sum of the following amounts:

(A) Two hundred eighty-three dollars (\$283) to support the following departments and activities:

Office of Chief Trial Counsel  
Office of Probation  
State Bar Court  
Mandatory Fee Arbitration program  
Office of Professional Competence  
Office of General Counsel  
Office of Member Records and Compliance  
Member Billing  
Office of Communications (support of discipline only)  
California Young Lawyers Association (discipline-related only).

(B) Nine dollars (\$9) to fund implementation of the workforce plan recommendations from the National Center for State Courts.

(C) Five dollars (\$5) to make up for revenue the State Bar will forgo because of assessment scaling and assessment waivers, as provided for under this rule.

(2) The \$297 assessment specifically excludes any funding for the State Bar's legislative lobbying, elimination of bias, and Bar relations programs.

(3) Payment of this assessment is due by March 1, 2017. Late payment or nonpayment of the assessment shall subject a member to the same penalties and/or sanctions applicable to mandatory fees authorized by statute.

(4) The provisions regarding fee scaling, fee waivers, and penalty waivers contained in Business and Professions Code section 6141.1 and rules 2.15 and 2.16 of the Rules of the State Bar of California shall apply to requests for relief from payment of the assessment

## APPENDIX J

or any penalty under this rule. Applications for relief from payment shall be made to the State Bar, which may grant or deny waivers in conformance with its existing rules and regulations. The State Bar shall keep a record of all fee scaling and fee waivers approved and the amount of fees affected.

(c) A special master appointed by the Supreme Court shall establish the Special Master's Attorney Discipline Fund, into which all money collected pursuant to this rule shall be deposited. The special master shall oversee the disbursement and allocation of funds from the Special Master's Attorney Discipline Fund for the limited purpose of maintaining, operating, and supporting an attorney disciplinary system, including payment of the reasonable costs and expenses of the special master as ordered by the Supreme Court. The special master shall exercise authority pursuant to the charge of the Supreme Court and shall submit quarterly reports and recommendations to the Supreme Court regarding the supervision and use of these funds. The State Bar shall respond in timely and accurate fashion to the special master's requests for information and reports.

Should any funds collected pursuant to this rule not be used for the limited purpose set forth in the rule, the Supreme Court may order the refund of an appropriate amount to members or take any other action that it deems appropriate.

Rule 9.9 adopted effective November 16, 2016.

APPENDIX K

HISTORY OF THE STATE BAR OF CALIFORNIA MISSION STATEMENT

## APPENDIX K

### **History of the State Bar of California Mission Statement**

The California Legislature created the State Bar in the 1927 State Bar Act. (Bus. & Prof. Code, § 6000 et seq; Stats. 1927, ch. 34, p. 38; *Greene v. Zank* (1984) 158 Cal.App.3d 497, 505; 2 State Bar Journal 92 (1927.)) The Act created a public corporation known as the State Bar of California, which was to be organized by the Chief Justice of the California Supreme Court and others appointed by him. (Stats. 1927, ch. 34, §§ 2, 12, 13.) It authorized the State Bar, with the approval of the Supreme Court, to fix the qualifications for the admission to practice, adopt Rules of Professional Conduct, and conduct disciplinary proceedings. (Stats. 1927, ch. 34, §§ 24-26.) The Act also gave the State Bar the authority to aid in the administration of justice. (Stats. 1927, ch. 34, § 23.) The State Bar Act describes the role of the State Bar as follows:

The board may aid in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, including, but not by way of limitation, all matters that may advance the professional interests of the members of the State Bar and such matters as concern the relations of the bar with the public.

(Bus. & Prof. Code, §6031, subd. (a).)

In 1960, the voters of California added the State Bar to the state constitution. (Cal. Const., art. VI, § 1c, adopted November 8, 1960.) In 1966, articles III, IV, V, and VI of the California Constitution were revised to present a more orderly and coherent treatment of the constitutional provisions defining the separation of powers between the legislative, executive, and judicial branches. (Stats. 1966, First Ex. Sess. 1966, ch.139, p. 960.) At that time, Article VI, section 1c was repealed and its language amended and reenacted by the voters as Article VI, section 9. (Cal. Const., art. VI, § 9, adopted November 8, 1966.) Article VI, section 9 of the California Constitution states:

The State Bar of California is a public corporation. Every person admitted and licensed to practice law in this State is and shall be a member of the State Bar except while holding office as a judge of a court of record.

At its August 24, 1991 meeting, the then Board of Governors (Board) adopted the following Mission and Goals:

## APPENDIX K

### Mission

Preserve and Improve our Justice System in Order to Assure a Free and Just Society under Law.

### Goals

- Assure full and equal access of all persons, regardless of circumstances, to the legal system and the delivery of quality legal services
- Assure that every lawyer in California is ethical, competent and professional
- Protect the public by effective, timely regulation of lawyer conduct
- Improve the administration of justice
- Respond to the public's need for information about law, lawyers and the legal system
- Assure the full and equal opportunity of all persons for entry into and advancement in the legal profession
- Maximize the accessibility to the governance of the legal profession for all lawyers and thus assure such governance is reflective of the full diversity of the profession
- Provide benefits, programs and services which promote professional growth and enhance the quality of life of the members
- Assure effective management of State Bar resources and operations

At its May 1997 Planning meeting, the Board reviewed the State Bar Mission Statement originally adopted in 1995-96, which varied slightly from that adopted in 1991. After review, the Board reaffirmed the Mission Statement. The following motion was adopted unanimously:

RESOLVED that the Mission of the State Bar is to preserve and improve our justice system in order to assure a free and just society under law.

In August 2001, Board members, specially invited guests, and State Bar Senior Executive Staff participated in a comprehensive, two-day strategic planning and organizational governance session. The results of that meeting included a new Board governance structure adopted by the Board on October 21, 2001, and the adoption of an interim Strategic Plan in 2002. That Strategic Plan retained the 1997 Mission Statement and included a new Vision Statement:

### Mission

The purpose of the State Bar of California is to preserve and improve our justice system to assure a free and just society under law.

## APPENDIX K

### Vision

As a result of the State Bar's efforts:

The public will have greater respect for both the legal profession and the State Bar of California. The public will enjoy greater access to legal services. Lawyers will be better prepared to practice law and less in need of professional discipline. When and where needed, the discipline system will protect the public in a fair and even-handed way and the public will be protected through a comprehensive system of malpractice insurance.

The legal system will reflect the diversity of the State and that diversity will be encouraged through a bar exam that provides equal access to admission to the profession. The courts will be seen as fair and judges will make their case decisions with impartiality and independent from external influence.

The State Bar will be effectively and efficiently governed and operated. As a non-partisan organization, it will demonstrate high levels of credibility and will enjoy excellent and productive working relationships with the Supreme Court, the Judicial Council of California, the Legislature, the Governor, and all members of the State Bar Family.

In 2003-2004, under the leadership of then President Anthony P. Capozzi, the Board focused on institutionalizing its strategic planning process, adopting needed planning policies and holding a series of issue meetings to develop performance measures related to the Board's Strategic Plan adopted in August 2002. The 2002 Mission and Vision Statements were retained in the 2004 Strategic Plan.

In 2008, the Board adopted its *Long Range Strategy of the State Bar of California*, which superseded and replaced its predecessor adopted in September of 2004. Both the Mission and Vision Statements were substantially revised as noted below.

### Mission

The purpose of the State Bar of California is to ensure that the people of California are served by the legal profession in a manner consistent with the highest standards of professional competence, care, and ethical conduct; to carry out such additional programs as may be required by law or by rule of court; and to contribute generally to the science of jurisprudence and the administration of justice to the extent and in a manner consistent with the First Amendment rights of its members.

## APPENDIX K

### Vision

From the successful execution of its mission, the Bar envisions a variety of beneficial results for the public and the profession:

- A legal profession respected for serving the public in accordance with the highest standards of professional competence, care and ethical conduct
- Adequate access to the justice system for all, regardless of economic means
- A justice system reflective of the diversity of the State it serves
- A legal profession which conducts itself with civility and comity
- A State Bar with productive working relationships with its stakeholders, including the State Supreme Court, the Judicial Council of California, the Legislature, the Governor, members of the legal profession and of the public, and all parties with an interest in the legal profession and the administration of justice in the State of California

In 2012, the Board adopted a Five Year Plan that did not contain mission or vision statements, but which instead laid out three large-scale initiatives the State Bar would undertake to “re-tool the organization for sustainable, lasting improvement by re-making key aspects of its organizational culture.” The initiatives were as follows:

**Information Technology Initiative:** Under this initiative, the State Bar would retire and replace all four of its core software applications to transform the attorney discipline system from a largely paper-driven process into a near-paperless operation.

**Physical Facilities Initiative:** This initiative would transform the physical workspace occupied by the State Bar. Wherever possible, operations will be centralized in the State Bar’s headquarters in San Francisco. The headquarters building itself will be reconfigured to provide modern open-plan workspace consistent with a silo-free culture, and to provide a more engaging environment for the public. In Los Angeles, the State Bar would procure workspace suitable to the reduced operational footprint, configured in accordance with the same design goals as in San Francisco, to achieve the same efficiency and increased productivity.

**Operations Re-engineering Initiative:** Each of the major service areas of the State Bar would undergo a process review and re-

## APPENDIX K

engineering effort to focus on leveraging technology to achieve efficiencies and service improvements; identifying linkages (and possibly duplications) across departments and service areas; and eliminating processes which are redundant or otherwise unnecessary.

At its January 2015 Planning Meeting, the Board reviewed preliminary goals and objectives for its next 2017-2022 Five-Year Plan. These goals and objectives were adopted in July 2015 with the understanding that further review and the addition of metrics would be required before they could become operational. At its January 2016 Planning Meeting, the Board decided to delay implementation of the 2017-2022 Five-Year Plan (developed in 2015) in order to take advantage of the final year of the then current 2012-2017 Five-Year Plan, which coincided with 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. Accordingly, the Board considered a new set of goals and objectives for 2016, the final year of the 2012-2017 Five-Year Plan period, which did not include vision or mission statements.

On November 17, 2016, the California Supreme Court issued its Order approving an interim special regulatory assessment to fund the State Bar attorney discipline system in 2017. A letter from the Chief Justice accompanied the Order, referring to the Commission on Judicial Nominees Evaluation, the Center on Access to Justice and the California Commission on Access to Justice as examples of “nondiscipline public protection functions” and “high priority, non-disciplinary activities.” The Chief Justice made clear:

The court acknowledges the State Bar's highest priority is protection of the public, and that this objective may be achieved not only through its discipline system, but also through the State Bar's administration of these types of programs [Commission on Judicial Nominees Evaluation, the Center on Access to Justice and the California Commission on Access to Justice], which work to ensure the integrity and effective functioning of the legal system.

At its 2017 Planning meeting, the Board considered and adopted the goals and objectives for the 2017 – 2022 Five-Year Strategic Plan. This Plan uses Business and Professions Code section 6001.1 as the State Bar Mission:

Protection of the public shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

APPENDIX L

FRAMEWORK FOR REVIEW OF SUB-ENTITIES AND BOARD COMMITTEES

## APPENDIX L

### **Framework for Review of Sub-Entities and Board Committees**

#### Common Questions to Sub-Entities and Board Committees

1. What is the mission? Who sets it? Is it appropriate and necessary?
2. What is the relationship to the Board?
  - Should it be strengthened? How?
  - How is Board oversight performed and is it adequate?
  - Does the Board liaison policy provide effective 2-way communication?
  - Is more regular reporting to the Board or its oversight committee needed?
3. Is the structure, i.e., composition, size, suitable for its mission?
  - What performance measures exist to measure effectiveness?
  - Is the mission effectively being advanced?
  - What explains performance deficiencies?
    - i. Individuals (lack of training, experience, commitment);
    - ii. Structural/institutional constraints (inappropriate composition/size, outdated mission, insufficient funding/support);
    - iii. External constraints (statutory or other impediments to better functioning).

#### Questions Specific to Sub-Entities

1. For those created by statute, is oversight and integration complicated by:
  - Statutory size/composition requirements; or
  - Statutory funding requirements or restrictions?
2. Do other entities inside or outside the State Bar perform the same or similar functions, creating duplication?
3. Do other jurisdictions perform the sub-entity's function in a different manner?
4. What considerations are relevant to recommending a different manner of performance?
  - What sub-entity performance problems have been identified which change might correct;
  - Is there a factual basis for concluding that other entities inside or outside the State Bar, or other states' different manners of performance, would be more effective than the sub-entity at performing the function; and
  - Should the Task Force seek advice from other sources?
5. Is the professional State Bar staff better suited to manage the work of the sub-entity?

## APPENDIX L

### Options

1. Maintain Status Quo
2. Undertake Further Study – With Study Plan and Target Date for Completion
3. If No Further Study Needed:
  - Consider recommendation for elimination; or change in mission, Board relationship, structure (composition/size), reporting, communication, performance measures, and/or oversight.
  - Specific to sub-entities:
    - Consider transferring function, in whole or in part, to professional staff.
    - Consider transitioning function, in whole or in part, to other entity inside or outside the State Bar.

APPENDIX M

THE STATE BAR OF CALIFORNIA SUB-ENTITIES

APPENDIX M  
The State Bar of California Sub-Entities

Committee Name	Program Area	State Bar Org	Oversight Committee	Charge [Per Board Book, statutes, State Bar Rules and other like source/reference materials]	Creating Authority	# of Appointees	Appointing Authority	Funding	Status	Notes
Committee on Administration of Justice	N/A	N/A	N/A	Established in 1933, this committee is a diverse group of attorneys concerned with aspects of civil procedure, court rules and administration, rules of evidence, and other matters having an impact on the administration of justice in the civil courts. The charge of the committee is as follows:  (a) Analyze, report to BOT and comment as authorized by the BOT on proposed court rules, legislation and other proposals affecting the committee's subject area. (b) Draft proposals relating to its area of concern for consideration by the BOT. (c) Perform such other functions relevant to the committee's subject area as the BOT may from time to time assign.	BOT	36	BOT		Terminated by BOT action. Responsibility transferred to Litigation Section. It is the State Bar's expectation that the new Sections entity will take this work with them.	
Committee on Alternative Dispute Resolution	N/A	N/A	N/A	Established in 1997, this committee is a diverse group of attorneys and public members with expertise or an interest in Alternative Dispute Resolution (ADR), including ADR neutrals, consumers of ADR services and those who reflect the experience and expertise of State Bar Sections. The charge of the committee is as follows:  (a) Analyze, report to BOT and comment as authorized by BOT on proposed court rules, legislation and other proposals affecting the committee's subject area. (b) Draft proposals relating to ADR for consideration by BOT. (c) Identify issues concerning the relationship of ADR to the practice of law, the administration of justice and improving access to justice. (d) Plan and administer educational programs relating to ADR. (e) Encourage attorneys involved in ADR to become active participants in State Bar. (f) Perform such other functions relevant to the committee's subject area as BOT may from time to time assign.	BOT	21	BOT		Terminated by BOT action. Responsibility transferred to Litigation Section. It is the State Bar's expectation that the new Sections entity will take this work with them.	
Committee on Appellate Courts	N/A	N/A	N/A	Established in 1970 and made a standing committee in 1973, this committee is a diverse group of attorneys drawn from such sources as law firms, solo practitioners, defense and prosecution offices handling criminal appeals, appellate court research staff, and law school faculty. The subject area of the committee concerns appellate court operation and appellate practice. In furtherance of the administration of justice, the charge of the committee is as follows:  (a) Analyze, report to BOT and comment as authorized by BOT on proposed court rules, legislation and other proposals affecting the committee's subject area. (b) Draft proposals relating to its area of concern for consideration by BOT. (c) Plan and administer educational programs designed to foster improvement in appellate practice and awareness of issues affecting the committee's subject area. (d) Perform such other functions relevant to the committee's subject area as BOT may from time to time assign.	BOT	16	BOT		Terminated by BOT action. Responsibility transferred to Litigation Section. It is the State Bar's expectation that the new Sections entity will take this work with them.	
Committee on Federal Courts	N/A	N/A	N/A	Established in 1949, this committee's charge is as follows:  (a) Generally enhance the lines of communication between the Federal Bench in California and the State Bar, including the attorney discipline system. (b) Bring to the attention of the Federal Bench in California State Bar issues that have an impact on Federal Court practice in California. (c) Make the BOT aware of Federal Court issues that may have an impact on the State Bar. (d) Review and make recommendations on proposals that affect California Federal Court practice and the Federal Courts in California. (e) Make recommendations to improve legal services in California's Federal Courts. (f) Organize and sponsor educational programs on Federal Court practice. (g) Perform such other functions relevant to the committee's subject area as BOT may from time to time to assign.	BOT	15	BOT		Terminated by BOT action. Responsibility transferred to Litigation Section. It is the State Bar's expectation that the new Sections entity will take this work with them.	
Committee on Mandatory Fee Arbitration	Prevention and Remediation	State Bar Court Administrator	RAD	The Mandatory Fee Arbitration (MFA) program provides an informal, confidential, low-cost forum for resolving fee disputes. MFA includes a network of local programs sponsored by 41 participating county bar associations. Most fee arbitrations are conducted through local bar association programs. The State Bar provides fee arbitration only in the absence of a local program. The committee, established in 1985, is tasked with reviewing policy and making policy recommendations; assisting local bar association arbitration programs; issuing advisories to assist arbitrators and developing uniform approaches; evaluating and proposing legislation.	BOT  [MFA created by LEG (B&P 6200-6202)]	16	BOT	General Funds		Comp: Attorneys; 1 Arbitrator; 3-5 Public.  California Supreme Court in <i>In re Attorney Discipline System</i> observed that fee disputes are at the core of many disciplinary complaints and held that the costs of mandatory fee arbitration should be funded as component part of the disciplinary system.

**APPENDIX M**  
**The State Bar of California Sub-Entities**

<b>Committee Name</b>	<b>Program Area</b>	<b>State Bar Org</b>	<b>Oversight Committee</b>	<b>Charge</b> [Per Board Book, statutes, State Bar Rules and other like source/reference materials]	<b>Creating Authority</b>	<b># of Appointees</b>	<b>Appointing Authority</b>	<b>Funding</b>	<b>Status</b>	<b>Notes</b>
Client Security Fund Commission	Prevention and Remediation	State Bar Court Administrator	RAD	The Client Security Fund (CSF), established by (State-Bar sponsored) legislation in 1972, reimburses clients who have lost money or property due to theft or equivalent dishonest act by lawyer acting in professional capacity. This committee, created in 1986, oversees and administers CSF; determines whether to grant an application under the rules; makes recommendations to the BOT on rules, methods for reviewing applications, and financial/administrative needs.	BOT [CSF created by LEG (B&P 6140.5)]	7	BOT	\$40 per active member / \$10 per inactive member  (B&P 6140.55)	In September 2016, Chief Justice directed State Bar to "ensure [CSF's] adequacy and operational efficiency."	Comp: Up to 4 Attorneys.  By statute, funds collected for CSF are restricted to program expenses (processing, defending, insuring of claims).  Per statute, State Bar "may" delegate administration of CSF to State Bar Court or any Board-created committee.
Lawyer Assistance Program Oversight Committee	Prevention and Remediation	State Bar Court Administrator	RAD	Lawyer Assistance Program (LAP), established by statute in 2002, provides comprehensive and confidential assistance to members and former members with substance abuse problems or mental illness. LAP offers counseling, consultation, arrangements for treatment and support groups. Attorneys may self-refer into LAP or may be referred by friends, family, the judiciary or the State Bar discipline system. Board Book recognizes that the purpose of LAP is to enhance public protection by rehabilitating members, former members, candidates for admission, so that they are able to practice law competently. The Oversight Committee, also established by statute, oversees LAP. By State Bar Rules, the Oversight Committee may establish one or more 3-member (physician, clinician, local bar member experienced in recovery) Evaluation Committees in Northern and Southern California. The Oversight Committee is authorized to accept or deny applications for admission into LAP, determine program completion and terminate individuals from participating in LAP.	LEG [LAP & Oversight Committee created by LEG (B&P 6231-6238)]	12	BOT/GOV/LEG	\$10 per active member / \$5 per inactive member  (B&P 6140.9)]	Oversight Committee presented three-year strategic plan at the March 2017 RAD meeting.	Comp (per statute): 6 BOT (2 licensed mental health professionals; 1 physician specialist in alcoholism / substance abuse; 1 expert nonprofit board member; 2 Attorneys (at least 1 in recovery); 4 GOV (2 Attorneys, 2 Public); 2 LEG (1 Senate Public; 1 Assembly Public).  LAP is not part of discipline system, but is identified here as Discipline Support because LAP staff work in close cooperation with Office of Chief Trial Counsel and State Bar Court to provide attorneys with opportunity for rehabilitation while resolving disciplinary charges.  Per statute, confidentiality is guaranteed; participants are responsible for treatment and recovery expenses; State Bar may charge reasonable administrative fee to participants; State Bar is required to establish financial assistance program.
Committee of Bar Examiners	Licensing	Office of Admissions	A&E	Established in 1927, the Committee of Bar Examiners (CBE) is authorized by statute to: (a) Examine all applicants for admission to practice law. (b) Administer the requirements for admission to practice law. (c) Certify to the Supreme Court for admission those applicants who fulfill the requirements. Inherent in the administration of the requirements of admission is the responsibility for determining the pre-legal and legal education eligibility of applicants and whether an applicant possesses the requisite good moral character to practice law. By statute and State Bar Rules, CBE scope of work includes: (1) admission to practice development/administration of bar examination moral character evaluation/informal conferences (appeal to State Bar Court) i. testing accommodations petitions/reviews of denials ii. accreditation of law schools iii. (3) registration of unaccredited law schools By statute, the Law School Council, referenced in B&P 6046.6, advises CBE on the content and format of the bar examinations, curriculum and law school education relating to the bar examination process. It acts as a 2-way channel of communication, sounding board and source of expertise. The council is composed of 14 members: 11 BOT (10 law school deans elected by their category of school; 1 Trustee [A&E Chair]); 3 CBE.	LEG/BOT  authorizes BOT to establish examining committee (B&P 6046)]	19	BOT/GOV/LEG	Fees:  Exam/ Application/ Admission/ Enrollment/ Law schools (accreditation and registration)	February 28, 2017, letter from Chief Justice, directing State Bar to make a report to the Court concerning the California Bar Examination by December 1, 2017, including summary of investigations/findings, recommendations for change, timeline; and to submit bi-monthly reports to the Court regarding the progress of its investigations.	Comp (per statute): 10 BOT (Attorneys); 3 GOV (Public); 6 LEG (3 Senate Public; 3 Assembly Public).  By statute, funds from exam fees restricted to defraying costs of administering provisions of law relating to admission to practice law.  By legislative design, BOT has authority to establish CBE, make appointments, determine budget, fix application fees, approve CBE's rules, conduct investigations. BOT has no authority to administer the admissions process. That authority is assigned to CBE. BOT has approved rules recognizing CBE's authority. A person refused certification by CBE is entitled to Supreme Court review.
California Board of Legal Specialization	Legal Specialization	Office of Admissions	A&E	Created by the California Supreme Court to provide public protection and encourage attorney competence, the California Board of Legal Specialization (CBLS) administers the State Bar of California Program for certifying legal Specialists in eleven areas of law, with the assistance of specialty advisory commissions. CBLS recommends program rules and provides policies and guidelines for certification of specialists; develops testing and legal education criteria for specialists; develops outreach efforts to increase awareness of the program; and advises BOT on establishment of specialty fields.  There are currently 11 Advisory Commissions to the CBLS, one commission for each of the certification specialty areas. The commissions review applications for certification; draft and grade the examinations with the assistance of professional consultants; and recruit high quality providers of legal specialist education.	BOT  [CBLS created by Supreme Court (Rule 9.35)]	CBLS - 15	BOT	Fees:  Exam/ Application/ Recertification/ Annual/ Approval Specialty Education Providers/ Approval Other Certification Entities	At its November 18, 2016, meeting, the Board directed staff to work with SA&A to modify the appointments process for the 11 advisory commissions. As modified, the advisory commission members will be appointed, and officers selected, by CBLS, not the Board, thus folding the advisory commission function into the overarching umbrella of CBLS and eliminating 11 separate sub-entities under the Board's direct oversight. Proposed amendments to the CBLS rules to effectuate this modification of the appointment process will be before the Board at its meeting on May 11-12, 2017.	Comp: 12 Attorneys; 3 Public.  BOT has authority to approve additional areas of legal specialization on recommendation from CBLS.  BOT may authorize other entities to grant certification on recommendation by CBLS.

**APPENDIX M  
The State Bar of California Sub-Entities**

<b>Committee Name</b>	<b>Program Area</b>	<b>State Bar Org</b>	<b>Oversight Committee</b>	<b>Charge</b> [Per Board Book, statutes, State Bar Rules and other like source/reference materials]	<b>Creating Authority</b>	<b># of Appointees</b>	<b>Appointing Authority</b>	<b>Funding</b>	<b>Status</b>	<b>Notes</b>
Commission for Revision of Rules of Professional Conduct (2nd Commission)	Ethics	Office of Professional Competence	RAD	B&P 6076 provides that the BOT may formulate rules of professional conduct subject to Supreme Court approval. The commission is responsible for developing proposed amendments to the California Rules of Professional Conduct.  The 2nd Commission for Revision of Rules of Professional Conduct was formed in 2014/2015 by request of the Supreme Court Administrator. A deadline of March 31, 2017, was met for the completion and submission of proposed rules to the Court for final consideration.	BOT	19 plus 4 advisors  and 1 consultant	BOT	General Funds	The work of the second commission was completed on March 31, 2017. A skeletal body was retained to address any residual issues that may arise during the Supreme Court's review and approval process.	California Supreme Court in <i>In re Attorney Discipline System</i> held that the costs associated with the Office of Professional Competence are a legitimate component of a comprehensive discipline system, specifically referring to the promulgation of rules of professional conduct.
Committee on Professional Responsibility and Conduct	Ethics	Office of Professional Competence	RAD	The Committee on Professional Responsibility and Conduct (COPRAC) assists lawyers in their desire to appreciate and adhere to ethical and professional responsibility standards of conduct. This assistance includes, but is not limited to:  (a) Issuing formal advisory ethics opinions on the ethical propriety of hypothetical attorney conduct at the request of an attorney or on its own initiative. (b) Assisting the BOT by studying and recommending additions, amendments to, or repeal of Rules of Professional Conduct of the State Bar or other laws governing the conduct of attorneys, and performing other functions as may be assigned to the committee by the BOT. (c) Encouraging the establishment of and providing assistance to local bar association ethics committees. (d) Assisting the public, including lawyers and judges, to understand the professional obligations of members of the State Bar, or lawyers authorized to practice in California, including sponsoring education programs and conferences.	BOT	15 plus 1 advisor	BOT	General Funds		California Supreme Court in <i>In re Attorney Discipline System</i> held that the costs associated with the Office of Professional Competence are a legitimate component of a comprehensive discipline system
Committee on Group Insurance Programs	N/A	N/A	N/A	Established in 1953, the Committee on Group Insurance Programs (COGIP) acts as a counselor and advisor to the BOT. Currently, State Bar sponsored group insurance programs monitored by the committee include: Accidental Death and Dismemberment, Health Care, Life, Disability Income, Long Term Care Insurance and Worker Compensation.  The charge of the committee is as follows:  (a) Study and make recommendations on new member group insurance programs to be sponsored by the State Bar. Propose changes in existing programs, recommend actuarial and other consulting studies as needed. (b) Make recommendations, consider premium rates, benefits, limitations, exclusions and other contract provisions in relation to the needs of the members of the State Bar generally and provisions designed to achieve program stability. (c) Work with the administrator/broker, insurance carrier, OGC and designated State Bar staff to prepare contracts for new programs and revisions to existing contracts. (d) Monitor ongoing approved programs and review sales literature for all approved programs on an ongoing basis. (e) Provide legal advice to the BOT concerning insurance law aspects of its recommendations. (f) The BOT designates this committee as a Safety Committee to administer group workers' compensation insurance programs for the State Bar of California, in accordance with California Insurance Code section 11656.6.	BOT	15 plus 1 consultant	BOT		Terminated by BOT action. It is anticipated that the COGIP suite of insurance products, and the State Bar's affinity programs, will be moved to the new Sections entity, along with the program revenue. During the transition, oversight of the administration of these insurance products and affinity programs will shift from COGIP to State Bar staff, aided by a small number of expert consultants paid for in whole out of the associated revenue.	
Committee on Professional Liability Insurance	Prevention and Remediation	Office of Executive Director	Stakeholders	Established in 1990, the purpose of the Committee on Professional Liability Insurance (COPLI) is to:  Oversee a professional liability program that has congruent goals of providing attorneys with insurance coverage and clients with recourse for malpractice. COPLI should also explore and pursue programs and strategies consistent with the economic viability of the program, to make professional liability insurance available to as many California attorneys as possible. COPLI oversees and reports to the BOT and/or its designated board standing committee on all aspects of the State Bar approved Professional Liability Insurance Program.	BOT	15	BOT	General Funds	By Board action, COPLI retained in present form until can be determined through further analysis and investigation whether oversight is best accomplished by COPLI, a differently structured committee or staff.	

**APPENDIX M**  
**The State Bar of California Sub-Entities**

Committee Name	Program Area	State Bar Org	Oversight Committee	Charge [Per Board Book, statutes, State Bar Rules and other like source/reference materials]	Creating Authority	# of Appointees	Appointing Authority	Funding	Status	Notes
California Young Lawyers Association	N/A	N/A	N/A	<p>Established in 2009, the California Young Lawyers Association (CYLA) is defined as members in good standing of the State Bar in first 5 years of practice in California or age 36 or under. The charge of CYLA is to:</p> <p>(a) Advise BOT on strategies to make the State Bar and CYLA continually relevant and beneficial to young lawyers in California.            (b) Promote the interests of young lawyers in California.            (c) Be responsible for programs, services, professional development and trend analysis, to assist young lawyers in becoming respected and successful members of the State Bar, keeping both CYLA and the State Bar ahead of the curve.            (d) Develop communication strategies that engage young lawyers in California.            (e) Create and continually strengthen outreach efforts to the barristers' organizations throughout the State and across the country.            (f) Assist the State Bar in the administration and implementation of its programs and responsibilities.            (g) Develop and implement regular public service projects that utilize the skills of the state's young lawyers and that would measurably benefit the public.            (h) Encourage and promote pro bono work.            (i) Identify and encourage young attorneys to become active participants in the administration and governance of the State Bar and make specific recommendations to the Board of Trustees for increasing their participation.            (j) Comment and advise on issues of relevance and importance to young lawyers in California.            (k) Screen applicants and make recommendations to the BOT for recipients of the Annual Jack Berman Award of Achievement.            (l) CYLA will provide regular reports to the BOT. There will be a permanent place on the board committee agenda for CYLA reports and updates.            (m) Function as State Bar MCLE Activity Auditors to conduct an audit of a particular MCLE program or class on behalf of the State Bar.</p>	BOT	20	BOT	13% - General Funds  87% - Unfunded	The November 2016 Supreme Court order approving an interim regulatory assessment to fund the State Bar in 2017 authorized funding for only that portion of CYLA that is discipline related, or 13%. 2018 fee bill moves CYLA to the new Sections entity. State Bar expects to continue to work with CYLA for defined public protection initiatives, e.g., development of outreach and educational initiatives for law students and new lawyers.  The	
Committee on Delivery of Legal Services	Justice	Office of Legal Services	SA&A	<p>Established in 2000, the areas of concern of the standing Committee on Delivery of Legal Services (SCDLS) are the delivery of legal services to poor and middle-income individuals in California. The charge of the committee is as follows:</p> <p>(a) Identify, develop and support improvements in the delivery of legal services to poor and middle-income individuals.            (b) Serve as a resource to BOT in legal services issues of importance to the State Bar.            (c) Develop and disseminate educational materials to improve the delivery of legal services to poor and middle-income individuals.            (d) Develop liaison relationships with other State Bar entities concerning legal services issues of importance to the State Bar.            (e) Analyze, report to BOT, and comment where requested by BOT or the Executive Director, on proposed court rules or legislation directly relating to or impacting the delivery of legal services to poor and middle-income individuals in California.</p>	BOT	20	BOT	General Funds	Merged with the California Commission on Access to Justice by BOT action.	
California Commission on Access to Justice	Justice	Office of Legal Services	SA&A	<p>Established in 1997 to implement one of the recommendations from <i>And Justice for All: Fulfilling the Promise of Equal Access to Justice in California</i>, the final report of the State Bar's Access to Justice Working Group, the California Commission on Access to Justice (CCAJ) pursues fundamental improvements in the civil justice system so that it is accessible for all. It is a collaborative effort involving all 3 branches of government dedicated to finding long-term solutions to the chronic lack of legal assistance available for low-income, vulnerable Californians.</p> <p>The Pro Bono Coordinating Committee initially was formed jointly by CCAJ and SCDLS in 2010, but currently functions as a sub-committee of CCAJ. Its charge is to encourage, facilitate and coordinate statewide pro bono efforts.</p>	BOT	26	BOT / Judicial Council / Judges Assn / GOV / LEG / Supreme Ct / AG / Chamber of Commerce / League of Women Voters / Labor Federation / Council Churches / Consumer Attys / Council of County Law Librarians / Legal Aid Association	General Funds		Comp: 10 BOT; 16 Other (Judicial Council 2; GOV 2; remaining 12 appointing authorities 1 each).  The budget for the California Commission on Access to Justice is \$28,600 plus significant staff time.  Although the California Supreme Court declined to fund CCAJ in its 2017 regulatory fee assessment as not related to discipline, the Court stated that it serves an important non-discipline public protection function, and encouraged the State Bar to find alternate funding.

**APPENDIX M**  
**The State Bar of California Sub-Entities**

<b>Committee Name</b>	<b>Program Area</b>	<b>State Bar Org</b>	<b>Oversight Committee</b>	<b>Charge</b> [Per Board Book, statutes, State Bar Rules and other like source/reference materials]	<b>Creating Authority</b>	<b># of Appointees</b>	<b>Appointing Authority</b>	<b>Funding</b>	<b>Status</b>	<b>Notes</b>
Legal Services Trust Fund Commission	Justice	Office of Legal Services	SA&A	<p>Established by the Board to manage the Interest on Lawyers' Trust Account (IOLTA) program, the Legal Services Trust Fund Commission (LSTFC) is responsible for grant distribution to 94 nonprofit legal aid organizations serving every county in California from the following sources:</p> <p>(1) "IOLTA grants" include IOLTA revenue and voluntary contributions through the dues bill. In 2016, \$11,107,919 was given to 75 legal services providers and 21 statewide support centers.</p> <p>(2) "Equal Access Fund (EAF) grants" are state appropriations in Judicial Counsel budget for legal aid, administered by LSTFC under contract with Courts. In 2016, \$12,773,000 was given under IOLTA formula, and \$1,419,000 was given to fund legal aid partnerships with court self-help programs.</p> <p>(3) In 2015, Bank of America and Citi Group settlements provided \$6,085,197 to fund grants for (a) foreclosure prevention legal services or (b) community redevelopment legal services. In 2016, LSTFC distributed \$4,132,790 through an RFP process.</p> <p>(4) In 2016, the Bank of America settlement resulted in an additional \$44,728,659 for community redevelopment and foreclosure prevention services grants.</p> <p>With CCAJ, LSTFC manages outreach, education and administration relating to the Justice Gap Fund (created in 2006 by the Legislature and implemented by BOT in 2008) and the Campaign for Justice. Pursuant to B&amp;P 6033, the State Bar is authorized to facilitate the collection and distribution of voluntary financial contributions from members and other donors to support nonprofit organizations that provide free legal services to indigent and low-income Californians. The Justice Gap Fund is included in the annual fee bill as a means of collecting voluntary contributions from members.</p>	BOT	24	BOT / Chief Justice (as Chair of the Judicial Council)	[IOLTA (B&P 6216)]		Comp: 14 BOT (10 Attorneys; 4 Public); 10 Chief Justice (5 Attorneys; 2 Public; 3 non-voting judge advisors including one appellate justice).
Council on Access and Fairness	Justice	Office of Legal Services	SA&A	<p>Established in November 2006, the charge of the Council on Access and Fairness (COAF) is as follows:</p> <p>(a) Advise BOT on strategies to develop collaborative activities and efforts along the diversity pipeline to raise interest in the legal profession.</p> <p>(b) Serve as liaison between the State Bar and the diverse stakeholders and constituencies in the legal profession.</p> <p>(c) Identify and encourage individuals from diverse backgrounds to enter profession.</p> <p>(d) Encourage full and equal opportunity for individuals from diverse backgrounds to remain and advance in the legal profession.</p> <p>(e) Identify and encourage attorneys from diverse backgrounds to become active participants in the administration and governance of the State Bar and make specific recommendations to BOT for increasing that participation.</p> <p>(f) Promote and ensure collaborative efforts to increase the numbers of attorneys from diverse backgrounds entering and advancing in the legal profession.</p> <p>(g) Study and report on the status of attorneys from diverse backgrounds in the legal profession and in State Bar activities.</p> <p>(h) Produce on an ongoing basis programs and materials designed to maximize opportunities for individuals from diverse backgrounds in the legal profession and in the administration and governance of the State Bar's programs and activities.</p> <p>(i) Comment, when requested by BOT or the Executive Director, on barriers directly related to access opportunities within the profession for attorneys from diverse backgrounds.</p> <p>(j) Screen applicants and make recommendations to the BOT for recipients of the Annual Diversity Awards.</p> <p>(k) Educate all attorneys of State Bar policy within the authority of this charge.</p>	BOT	25	BOT	Elimination of Bias / Bar Relations Fund  [opt-out / voluntary donation]		
Commission on Judicial Nominees Evaluation	Justice	Office of Executive Director	SA&A [annual reporting]	<p>Established pursuant to Government Code section 12011.5 in 1979, the Judicial Nominees Evaluation Committee (JNE) evaluates all candidates who are under consideration for a judicial appointment by the governor. The 38-member commission is composed of lawyers in active practice, one or more retired judges, and non-lawyers.</p> <p>Upon receipt from GOV of names of candidates for judicial office, State Bar shall use confidential procedures to evaluate and determine candidates' qualifications. Within 90 days of submission of name, State Bar shall report, in confidence, to GOV its recommendation whether candidate is exceptionally well qualified, well qualified, qualified or not qualified, and the reasons for the recommendation.</p>	LEG [Govt 12011.5]	38	BOT	General Funds		Statute refers to JNE as a State Bar agency, the membership of which shall consist of attorney and public members.  Although the California Supreme Court declined to fund JNE in its 2017 regulatory fee assessment as not related to discipline, the Court stated that it serves an important non-discipline public protection function, and encouraged the State Bar to find a way to provide funding.
Judicial Nominees Evaluation Review Committee	Justice	Office of Executive Director	SA&A [annual reporting]	<p>Established pursuant to State Bar Rule 7.66 of Title 7, Division 1, Chapter 3, Article 6, the Judicial Nominees Evaluation Review Committee (RJNE) is charged with reviewing requests from those candidates who are seeking reconsideration of JNE's "not qualified" rating. RJNE evaluates information pertaining to the investigation of the candidate and focuses on possible violations of rules or procedure.</p>	State Bar Rule [Rule 7.66]	5	BOT	General Funds		Comp: 1 Attorney; 1 Public; 1 past member of JNE; 2 at-large.  Although the California Supreme Court declined to fund JNE in its 2017 regulatory fee assessment as not related to discipline, the Court stated that it serves an important non-discipline public protection function, and encouraged the State Bar to find a way to provide funding.

APPENDIX N

BOARD COMMITTEE STRUCTURE

APPENDIX N  
Board Committee Structure

**EXECUTIVE COMMITTEE (EXCOM)**

**Chair and Vice Chair**

Chair of ExCom is BOT President

Vice Chair of ExCom is BOT Vice President

**Membership** [per current practice]

Officers; Chairs of RAD, Stakeholders, A&E, P&B, Audit; Reps of each appointing authority: Governor, Supreme Court, Senate, Assembly and Governor; President, ex-officio (per description of President duties in Board Book); Executive Director, non-voting (per Board Book).

[Currently, most of the ExCom members fill 2 spots, e.g.: Trustee Meyers fills Vice Chair and RAD Chair; Trustee Colantuono fills Assembly appointee and SA&A Chair; Trustee LeBran fills Governor appointee and Audit Chair.]

**Responsibilities**

(1) Effective functioning of Board; (2) Board-ED relationship; (3) oversight of high-level internal operations.

**Accomplished By**

(1) Coordinating work of Board committees; (2) updating Board mission; (3) setting Trustee performance standards and monitoring performance; (4) informing legal community about work of Board; (5) executing Trustee capacity building program (orientation, continuing education, mentoring); (6) overseeing Board Secretary function; (7) updating ED job description, negotiating ED performance targets, evaluating ED progress in meeting targets; (8) addressing legal issues and overseeing litigation; (9) addressing non-delegable internal operational issues (MOU ratification, changes to conflict of interest rules); (10) taking action on behalf of Board in emergencies.

**Notes**

- September 8, 2016, letter from Chief Justice stated support for committee structure provided for in unsuccessful 2017 fee bills, i.e., executive committee with all appointing authorities represented. President Fox implemented this reform through his recommendation of membership on the ExCom for 2016-2017.
- 2018 fee bill proposes same structure as proposed in unpassed 2017 fee bills.

## **REGULATION & DISCIPLINE COMMITTEE (RAD)**

### **Chair and Vice Chair**

Chair of RAD is BOT Vice President.

### **Membership**

All Trustees, except current appointees to the Supreme Court's Applicant Evaluation and Nomination Committee (AENC).

### **Responsibilities**

Monitoring the operational and financial performance of Client Security Fund, State Bar Court, Discipline, and Mandatory Fee Arbitration; not responsible for planning.

### **Accomplished By**

(1) Establishing reporting process; (2) overseeing Chief Trial Counsel per statute; (3) approving changes to policy-level quality control measures applicable to Office of Chief Trial Counsel, Client Security Fund, Office of Probation; (4) reviewing performance reports and reporting back to Board; (5) identifying needed corrective actions requiring no change in approved program goals or budget; (6) overseeing development and implementation of operational policies requiring no change in approved program goals or budget; (7) overseeing preparation of assessment of past year's fiscal and program performance for presentation at annual strategic work session; (8) reviewing internal and external audit reports and overseeing corrective action; (9) overseeing annual discipline report process and reviewing stats.

### **Oversight Responsibility**

- *Committee on Mandatory Fee Arbitration*
- *Committee on Professional Responsibility and Conduct*
- *Commission for Revision of Rules of Professional Conduct*
- *Client Security Fund Commission*
- *Lawyer Assistance Program Oversight Committee*

### **Notes**

- Rule 9.11 of the California Rules of Court governs AENC [selection method for State Bar Court judges] and requires that two members of AENC be current members of Board who do not sit on the Board's discipline committee.
- B&P § 6079.5 requires that the Chief Trial Counsel report to the discipline committee.
- Any changes relating to RAD must take into consideration implications arising out of Rule 9.11 and B&P § 6079.5.

**ADMISSIONS & EDUCATION COMMITTEE (A&E)**

**Chair and Vice Chair**

Not addressed in charter.

**Membership**

Not addressed in charter.

**Responsibilities**

Monitoring the operational and financial performance of the Committee of Bar Examiners, Professional Competence, Special Admissions, Legal Specialization, pre-licensing and continuing education, with a focus on preventative public protection.

**Accomplished By**

(1) Establishing reporting process; (2) reviewing performance reports and reporting to Board; (3) identifying needed corrective actions requiring no change in approved programs/budget; (4) overseeing development and implementation of operational policies requiring no change in approved program goals or budget (including MCLE requirements); (5) overseeing preparation of assessment of past year's fiscal and program performance for presentation at annual strategic work session.

**Oversight Responsibility**

- *Committee of Bar Examiners*
- *California Board of Legal Specialization*

**STAKEHOLDER RELATIONS, ACCESS TO JUSTICE, AND APPOINTMENTS COMMITTEE (SA&A)**

**Chair and Vice Chair**

Not addressed in charter.

**Membership**

Not addressed in charter.

**Responsibilities**

(1) Effective relationships with stakeholders; and (2) Positive relationships with attorney members and Sections' Council.

**Accomplished By**

(1) Overseeing development of strategies for building respect for State Bar, lawyers and legal profession and building relationships with key stakeholders; (2) overseeing the administration of member/customer/constituency services and surveys, reviewing surveys and reporting results back to Board; (3) overseeing development and implementation of operational policies requiring no change in approved program goals or budget; (4) helping expand resources for legal aid providers; (5) ensuring State Bar's relationships with Sections and other State Bar entities are positive and productive; (6) monitoring and developing programs relating to attorney member practice issues and service programs for the benefit of attorney members, including diversity; (7) overseeing development of legislative relations policies; (8) overseeing Trustee participation in outreach; (9) overseeing Access to Justice programs; (10) recommending non-disciplinary appointments; (11) ensuring adequate public notice of appointment opportunities; (12) overseeing sub-entity appointment process.

**Oversight responsibility**

- *California Commission on Access to Justice/Committee on Delivery of Legal Services*
- *Legal Services Trust Fund Commission*
- *Council on Access and Fairness*
- *California Young Lawyers Association Board of Directors (CYLA)* [to move to new Sections entity per 2018 fee bill]
- *Committee on Administration of Justice* [terminated & responsibility transferred to Litigation Section]
- *Committee on Alternative Dispute Resolution* [terminated & responsibility transferred to Litigation Section]
- *Committee on Appellate Courts* [terminated & responsibility transferred to Litigation Section]
- *Committee on Federal Courts* [terminated & responsibility transferred to Litigation Section]
- *Committee on Group Insurance Programs (COGIP)* [terminated & program area to transfer to new Sections entity]
- *Committee on Professional Liability Insurance (COPLI)* [retained until determination whether to supervise by committee or staff]
- *Commission on Judicial Nominees Evaluation (JNE) and Review Committee (RJNE)* [annual reporting only]

## APPENDIX N

### AUDIT COMMITTEE

#### **Chair and Vice Chair**

Not addressed in charter.

#### **Membership**

Not addressed in charter.

#### **Responsibilities**

Role and responsibility is oversight; not responsible for preparation or operation, just oversight. (State Bar management responsible for preparation of financial statements, operating the State Bar, assuring legal compliance; outside auditors responsible for auditing the financial statements.)

#### **Accomplished By**

(1) Selecting independent auditor for annual audit; (2) monitoring progress of audit; (3) evaluating results of audit; (4) ensuring that control weaknesses and legal compliance violations are remedied; (5) serving as communications link between Board and independent auditor; (6) monitoring adequacy of internal control structure.

#### **Customary Activities**

(A) *External Audit* – recommending appointment of external auditors; reviewing annual audit scope and fees; evaluating auditor’s independence; evaluating reports; (B) *Financial Management* – evaluating adequacy of internal controls and implementation of auditor’s recommendations; reviewing results of biennial State Bureau of Audits audit; (C) *Other* – give advice and counsel to ED and COO; quarterly review of travel/expense reimbursements.

## **PLANNING & BUDGET COMMITTEE (P&B)**

### **Chair and Vice Chair**

Chair or Vice Chair of P&B is BOT Treasurer.

### **Membership**

Not addressed in charter.

### **Responsibilities**

Leading planning, budget preparation and program implementation.

### **Accomplished By**

(1) Consulting with President, Vice President and ED on design of State Bar’s planning and budget development cycle and on the annual planning calendar; (2) coordinating with President and Vice President the overseeing and preparation for, and hosting of, the annual strategic work session; (3) recommending to the Board strategic issues to add to strategic plan; (4) ensuring all program plans include both financial and programmatic performance targets that the oversight committees can use in monitoring performance within their areas; (5) designing input and participation of non-governing standing committees.

### **Treasurer’s Duties**

(1) Serve as the Chair of the Planning and Budget Committee; (2) serve as the Chair of the Audit Committee (per Board Book, though not current practice); (3) serve as Co-Chair of the annual Strategic Work Session; (4) consult with the ED and CFO and report to the Board regarding matters involving the budget and internal financial controls; (5) take primary responsibility for ensuring the Board’s attention to the Bar’s fiscal position, budget, audit reports, and stewardship of Bar assets to ensure protection of the public.

### **Notes**

- With termination of non-governing standing committees (e.g., *Com on Appellate Courts*), #5 under “Accomplished by” list is no longer needed.
- B&P §6140.1 – proposed baseline budget for following fiscal year due Nov. 15; proposed final budget due Feb. 15, so that budget can be reviewed and approved in conjunction with fee bill.
- B&P § 6140.12 – 5-year strategic plan, updated every 2 years; 1st 5-year strategic plan was submitted February 2012; 2nd 5-year strategic plan was submitted February 2017.
- B&P § 6001.2 – Governance in the Public Interest Task Force every three years (2011, 2014 [submitted in 2016], 2017, 2020, etc.)

## **BOARD LIAISON POLICY**

### **Generally**

- President determines need for and selection of liaisons.
- Liaisons serve 3 year terms.
- Liaisons are to attend at least 1 meeting per year.
- Historically, President and Vice President and/or designated members of the SA&A have served as liaisons to *Committee of Bar Examiners* and *Commission on Judicial Nominees Evaluation*; currently, however, the President has designated 2 members of the SA&A as the all-purpose appointments liaisons; consequently they serve as the liaisons to *Committee of Bar Examiners* and *Commission on Judicial Nominees Evaluation*.

### **Responsibilities at Meetings**

- Demonstrate appreciation.
- Ascertain where assistance needed.
- Determine if there are overlapping goals/projects.
- Report on Board activities/goals.
- Report to back to Stakeholders committee and Board.

APPENDIX O

PROPOSED STATE BAR OF CALIFORNIA PROGRAM STRUCTURE

APPENDIX O

Proposed State Bar of California Program Structure

Board Oversight	Program Committee				Regulation and Discipline Committee				
Program Area	Admissions/Licensing	Member Records and Compliance	Administration of Justice	Legal Specialization	Discipline	Prevention and Remediation	Ethics		
<b>Principal Functions</b>	Pre-Admissions • First Year Law Student Examination • Bar Examination • Moral Character	Maintenance of Attorney Roll	Grants to Legal Services Providers	Certification of Legal Specialists	Office of Chief Trial Counsel  • Discipline-Related Attorney Investigation and Prosecution • Unauthorized Practice of Law Investigation and Referral for Prosecution • Moral Character Proceedings	Client Security Fund	Formulation of Rules of Professional Conduct		
	Certifying Applicants for Admission	MCLE Provider Certification	Access to Justice Policy and Initiatives		Probation Monitoring			Lawyer Assistance Program	Ethics Hotline
	Special Admissions	MCLE Compliance Tracking	Diversity and Elimination of Bias		OCTC Ethics School			Mandatory Fee Arbitration	Ethics Opinions
	Law School Regulation	Certification of Law Corporations and Limited Liability Partnerships	Evaluation of Judicial Candidates		State Bar Court* Hearing and Appellate Review			Client Trust Account School	Ethics Symposium
<b>Sub-Entities</b>	Committee of Bar Examiners		Commission on Access to Justice/Committee on Delivery of Legal Services	Board of Legal Specialization		Client Security Fund Commission	Commission for Revision of the Rules of Professional Conduct		
			Legal Services Trust Fund Commission			Lawyer Assistance Program Oversight Committee		Committee on Professional Responsibility	
			Council on Access and Fairness			Committee on Mandatory Fee Arbitration			
			Commission on Judicial Nominees Evaluation and Review Committee			Committee on Professional Liability Insurance			
<b>Infrastructure</b>	Executive Director's Office, Finance, General Counsel, General Services, Human Resources, Information Technology, Government Affairs								

\*The State Bar Court is not subject to direct oversight by the Board of Trustees with respect to its quasi-judicial functions.