

## Proposal for De-Unification/Reform of the California State Bar

(March 31, 2016)

Proposed Amendments to the State Bar Act:

### **Reform Process & Organizational Structure of Regulatory Agency:**

The Legislature is asked to enact legislation, effective January 1, 2017, requiring the State Bar to propose a division of funding sources, other assets, staff, and programs such that the trade association functions of the State Bar shall be separated from the regulatory functions of the Bar by forming a private, non-profit corporation to function as the trade association for the legal profession for the State of California and establishing the California Legal Services Regulatory Board.

The State Bar shall allow at least 60 days for public comment and hold at least two public hearings before adopting and proposing the plan to the Governor, the Chief Justice, the Judicial Council and the Judiciary Committees of the Assembly and Senate.

The functions the plan assigns to the trade association shall be those appropriate for a private, non-profit association with a voluntary membership, comparable to those performed by the California Medical Association, including the Sections and all committees, commissions and State Bar departments that perform trade association functions.

The plan shall propose to transfer to the trade association the Sections' reserve funds , other funds legally restricted to activities to be transferred to the trade association, intellectual property rights and content generated by the Sections, the right to use the historic seal of the California State Bar and to use the name "California State Bar Association." Public communications on behalf of the State Bar shall use the name "California Legal Services Regulatory Board" to avoid confusion between the State Bar Association and the regulatory agency. The trade association shall be obligated by statute to use those resources consistently with the purposes for which they were accrued until those resources are fully expended.

Those functions appropriately performed by a state regulatory agency shall remain with the State Bar. Those include admissions (including the Committee of Bar Examiners), law school accreditation and registration, discipline (including the Office of Chief Trial Counsel and the State Bar Court), the Lawyer's Assistance Program, Client Security Fund, Member Records/Compliance, and the Judicial Nominees Evaluation Commission. While the CLSRB shall regulate mandated Continuing Legal Education (CLE) and may use education as a means to achieve the public protection for which the State Bar exists, it shall not itself be an education provider in competition with the trade association, other for-profit and non-profit providers of CLE.

There shall be no net loss of State Bar employment as a result of the proposal.

The legislation shall require the final State Bar plan to be submitted to the Governor, the Chief Justice, the Judicial Council and the Judiciary Committees of the Assembly and Senate by **April 1, 2018**. It is anticipated the plan will inform legislation adopted in 2018 to be effective **January 1, 2019**.

### **CLSRB Structure**

We propose 2016 legislation to amend the State Bar Act to terminate the Board of Trustees and to establish the California Legal Services Regulatory Board effective January 1, 2019, as follows:

The CLSRB shall have 13 members appointed as follows:

6 attorneys, appointed as follows:

- 1 by the Governor
- 1 by the Supreme Court
- 2 by the Senate Rules Committee
- 2 by the Speaker of the Assembly

7 persons never licensed as an attorney in any jurisdiction, appointed as follows:

- 2 by the Governor
- 3 by the Supreme Court
- 1 by the Senate Rules Committee
- 1 by the Speaker of the Assembly

To achieve appropriate geographic diversity and recognizing the great diversity of California, each appointing authority's appointees at any given time shall include at least one person whose residence or place of business is located in:

- i. The counties included in the 1<sup>st</sup> and 3<sup>rd</sup> District Courts of Appeal;
- ii. The counties included in the 5<sup>th</sup> and 6<sup>th</sup> District Courts of Appeal; and
- iii. The counties included in the 2<sup>nd</sup> and 4<sup>th</sup> District Courts of Appeal.

Board members shall serve four-year, overlapping terms expiring on December 31<sup>st</sup> of the appropriate year and may be reappointed to one or more successive terms. In the absence of direction by the appointing authority to classify his, her or its appointees, initial appointees of each appointing authority shall be classified by lot so that one appointee serves for two years, one for three years and the third for four years. Two Supreme Court appointees shall serve for four years. Those appointed on completion of these initial terms shall be appointed to four-year terms.

Board shall elect from its members, at least annually and not later than December 31st, a Chair and a Vice Chair to serve in the absence of the Chair. There shall be no bar to reelection of a Chair or Vice Chair to one or more successive terms.

Existing Trustees shall continue in office during the terms to which they were elected or appointed, except as follows:

Elections of attorney members of the California State Bar Board of Trustees shall cease as of January 1, 2017.

Appointed members may be reappointed to serve through December 31, 2018. Thereafter, the Board of Trustees shall sunset, to be succeeded by the CLRSB.

### **Annual Meeting**

The statutory requirement for an annual meeting of the State Bar shall sunset as of January 1, 2019.

### **Additional Business & Professions Code Changes**

1. The language of the Business & Professions Code shall be revised to eliminate references to “members” and “dues,” replacing them with references to “licensees” or “attorneys” and to “fees.”
2. Business and Professions Code Section 6031.5 shall be amended to require the CLSRB to collect voluntary dues for the trade association and its sections in conjunction with the collection of the annual licensing fee as the State Bar currently collects such moneys on behalf of the Conference of Delegates of California Bar Associations.
3. These provisions of the Business and Professions Code shall be amended to augment the Supreme Court’s oversight of the CLSRB:
  - a. 6095(b) – amend to require this report on felonies by attorneys to be provided to the Chief Justice as well as to the two Judiciary Committees
  - b. 6126.7(a) – amend to require this report on notario fraud violations to be provided to the Chief Justice as well as to the two Judiciary Committees
  - c. 6140.1 – amend this requirement that the budget be provided to the two Judiciary Committees to require it to be provided to the Chief Justice as well
  - d. 6177 – amend requirement for the Annual Discipline Report to require it to be provided to the Chief Justice as well as to the Legislature
  - e. 6238 – amend requirement for annual report on the Lawyers’ Assistant Program to require it to be provided to the Chief Justice as well as to the Legislature
4. The Bar shall propose a program to use a portion of licensing fee revenues to fund a loan forgiveness fund for newly licensed attorneys who agree to provide legal services in

counties under-served by the legal profession in public or private service, subject to a voluntary check-off comparable to that provided by B&PC 2436.5, which provides a similar program for physicians.

5. The CLSRB shall be prohibited from creating specialty law sections or committees that collect voluntary dues or compete with the state-wide trade association created by this act.
6. Section 6201.2 re Governance in the Public Interest Task Force shall be amended to make Senate and Assembly attorney appointees to the Board eligible to serve on the Task Force.
7. Section 6086.16 shall be repealed (provision requiring a report in 2005 on abuse of BPC 17200 (unfair business practices statute)) as expired.