

AGENDA ITEM

JANUARY 122
Frye v. THC Report
to Supreme Court

DATE: December 19, 2007

TO: Members, Board of Governors

FROM: Robert A. Hawley, Deputy Executive Director

SUBJECT: Report of the State Bar of California to the Supreme Court of California Regarding Nonprofit Entity Legal Practice in Response to the Supreme Court's Referral to the State Bar in *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal.4th 23

EXECUTIVE SUMMARY

At its November 2007 meeting, the Board Committee on Regulation, Admissions & Discipline (RAD) referred to a RAD subcommittee for review and revision the Report of the State Bar of California to the Supreme Court of California Regarding Nonprofit Entity Legal Practice in Response to the Supreme Court's Referral to the State Bar in Frye v. Tenderloin Housing Clinic, Inc. (2006) 38 Cal. 4th 23. At a specially noticed RAD meeting on December 13, 2007, the subcommittee's revised report was approved by RAD for submission to the full Board. The report as approved by RAD is now before the Board for approval for submission to the Supreme Court. If you have further questions on this subject, please contact Robert Hawley at 415-538-2277, Robert.Hawley@calbar.ca.gov.

INTRODUCTION

The Board Committee on Regulation, Admissions & Discipline (RAD) has overseen the development of the State Bar's response to the Supreme Court's request that the State Bar study nonprofit law practice in California and address issues that the Supreme Court identified in *Frye v. Tenderloin Housing Clinic, Inc.* A staff working group developed a report based upon public surveys, hearings, and significant other research and outreach which was before RAD at its November meeting for approval. RAD appointed a RAD subcommittee to review the report and make revisions for RAD's consideration. At a specially noticed RAD meeting on December 13, 2007, the subcommittee's revised report was approved for submission to the Board. The report as approved by RAD is now before the Board for approval for submission to the Supreme Court.

The report, as an administrative communication between the Supreme Court and the State Bar, fulfilling its role as the administrative arm of the Supreme Court in public protection matters, is not required to undergo the public comment process. In light of the public policy nature of the report, staff recommended in August that the initial report be circulated for an abbreviated 45-day period of public comment. That comment period ended October 15, 2007. The comment received is summarized in Appendix 2-7 to the report and was presented to RAD at the November meeting. The report is not subject to further public comment.

The agenda item and initial report before RAD at the November meeting is available electronically at the State Bar's website, www.calbar.ca.gov under Board of Governors, Agenda Archive, for the November 2007, RAD meeting. The revised report, attached here, is submitted by RAD to the Board with a recommendation that the Board approve it for submission to the Supreme Court.

RECOMMENDATION/RESOLUTION

RAD recommends that the Board of Governors approve the report as revised and presented here for submission to the Supreme Court. If this is the will of the Board, the following resolution is suggested:

“RESOLVED, that upon the recommendation of the Board Committee on Regulation, Admissions & Discipline, the Board of Governors of the State Bar of California approves the Report of the State Bar of California to the Supreme Court of California Regarding Nonprofit Entity Legal Practice in Response to the Supreme Court's Referral to the State Bar in *Frye v. Tenderloin Housing Clinic, Inc* (2006) 38 Cal. 4th 23, in the form attached, for filing with the Supreme Court.”

DISCUSSION

Background

In *Frye v. Tenderloin Housing Clinic, Inc.* (2006) 38 Cal. 4th 23, the Supreme Court of California requested the State Bar of California, as its administrative arm in public protection matters, to conduct a study of law practice by nonprofit corporations and organizations in California and report back to the Court as to whether enhanced registration or regulatory standards governing nonprofits practicing law were warranted to protect the public interest. A detailed history of the *Frye* case, the referral to the State Bar and related matters is provided in the report.

By Board action, the RAD Committee was given oversight responsibility for the development of the report. A staff-working group developed the initial report. That report was revised by RAD and is now before the Board for approval.

The State Bar initially advised the Supreme Court that it anticipated filing the report with the Supreme Court by December 31, 2007. The State Bar has now advised the Supreme Court that the report will be filed by the end of March 2008.

Under the State Bar's public comment rules, this report was not required to be circulated for comment. It is a report of the State Bar to the Supreme Court in which the State Bar is acting as the administrative arm of the Supreme Court. The State Bar is providing guidance to the Supreme Court on issues unique to the expertise of the State Bar. However, RAD believed that both the Board and the Supreme Court would be well served by comment on the initial report from interested parties so RAD circulated that report for an abbreviated period of public comment. RAD revised the report in light of the comment and presents the revised report here for the Board's approval. Further public comment is not mandated.

CONCLUSION

Assuming that the Board accepts RAD's recommendation to approve the report as presented here for submission to the Supreme Court, adoption of the above resolution is recommended.

PERSONNEL/FISCAL IMPACT: None (at this time)

ADMINISTRATIVE MANUAL IMPACT: None

RULE/STRATEGIC PLANNING CONSIDERATIONS: None (at this time)

Attachments: Revised Report, December 2007
 The Report's Appendices

The initial report of October 2007 and the Appendices referenced in the report are available at www.calbar.ca.gov > Board of Governors > Meeting Agendas > Agenda Archive for the November 2007 RAD meeting.