

AGENDA ITEM

MAY 162

Immediate Action Items

DATE: May 12, 2008

TO: Members, Board of Governors
Members, Board Committee on Stakeholder Relations

FROM: Anthony Williams, State Bar Legislative Representative
Saul Bercovitch, Legislative Counsel
Mary Lavery Flynn, Director, Legal Services Outreach

SUBJECT: Immediate Action Items – AB 1725, AB 2095, AB 3050, SB 1407, SB 1608

EXECUTIVE SUMMARY

The State Bar's Office of Governmental Affairs has identified several bills introduced in the California Legislature in 2008 that are of potential interest to the State Bar. These bills all have been amended since the last Board meeting, several of them very recently. This is therefore the first Board meeting that provides an opportunity to address these bills. In addition, the bills will receive final consideration by the Legislature before the next Board meeting, so they need to be considered as back-to-back items at this Board meeting. The State Bar's Office of Governmental Affairs has reviewed the bills and proposes that the Board Committee on Stakeholders Relations recommend that the full Board of Governors take the positions shown below on the five bills in question. Questions regarding this agenda item should be directed to Anthony Williams, State Bar Legislative Representative at (916) 448-4000 or Saul Bercovitch, Legislative Counsel at (415) 538-2306.

BACKGROUND

The State Bar's Office of Governmental Affairs has identified four bills recently amended in the California Legislature in 2008 that are of potential interest to the State Bar. All four of the bills relate directly to the State Bar and/or attorney ethical practices. The State Bar's Office of Governmental Affairs has reviewed these bills, and proposes that the Board Committee on Stakeholders Relations recommend that the full Board of Governors take the positions on the bills, as described in detail below.

1. [AB 1725 \(Lieu\)](#) (As amended 5/06/08) – Evaluation of Judicial Appointments.

Status: Senate Judiciary

Description: Under current law, if the Governor has appointed a person to a trial court who has been found not qualified by the Judicial Nominations Evaluation Commission (JNE), the State Bar Board of Governors is authorized to make this fact public after due notice to the appointee of its intention to do so. AB 1725 would remove that discretionary authority and instead require the Bar to make the information public after notice to the appointee.

Recommendation: None, subject to Board discussion.

2. [AB 2095 \(Davis\)](#) (As amended 4/23/08) – Judicial Appointments; Judicial Nominations and Evaluation Commission Training.

Status: Assembly Floor

Description: AB 2095 would require the Governor to collect and release, on a continuous basis by posting on the Governor's official Web site, the names of all persons, other than employees of the Governor, who have been provided judicial application materials or related documentation on one or more judicial applicants by the Governor or his or her representatives to assist in the decision whether to submit an application to the State Bar for evaluation or whether the applicant should be appointed after he or she has been evaluated by the State Bar.

The bill also would require each member of the Judicial Nominations Evaluation Commission (JNE) to complete a minimum of 2 hours of training in the areas of fairness and bias in the judicial appointments process on an annual basis.

Finally, AB 2095 would revise the provisions requiring the Governor, the State Bar, and the Administrative Office of the Courts to collect and release specified demographic data annually, as described above, to specifically require that the information be for the prior calendar year. The bill would also require, with respect to the collection and release of demographic data, the State Bar and the Administrative Office of the Courts to use consistent ethnic and racial categories designated and used by the Governor.

Recommendation: Take no position. Express concerns related to the training requirements in the bill.

3. [AB 3050 \(Judiciary\)](#) (As introduced 02/28/08) – Legal Aid; Civil Court Interpreters.

Status: Assembly Appropriations.

Description: AB 3050 implements two key recommendations of the California Commission on Access to Justice 2007 "Action Plan for Justice" report. This bill would

prohibit a person or organization that is not a legal aid organization, as defined, from using the term "legal aid," or any variant or similar name in any firm name, trade name, fictitious business name, or other designation, or on any advertisement, letterhead, business card, or sign. The bill would subject a person or organization that violates this prohibition to civil liability. This bill would also permit the Judicial Council to establish a pilot project in selected counties for the provision of language interpreters in civil proceedings for indigent persons. The cost providing the interpreters would be funded by a \$10 increase in civil filing fees.

The State Bar has consistently led and supported efforts to ensure that the public is protected from activities by lawyers or legal organizations that are misleading or fraudulent. Through both the Office of the Chief Trial Counsel and efforts to educate consumers, the Bar takes very seriously the need to protect the public in this regard, including supporting recent legislative efforts providing expanded authority to enforce prohibitions against the unauthorized practice of law. AB 3050 seeks to address problems created when legal consumers are misled into believing that a lawyer or law firm is providing free or reduced legal services through so called "legal aid" organizations. It is consistent with the Bar's public protection function to ensure that consumers are not misled.

This bill has also been reviewed by the Intellectual Property Section of the Bar which has identified technical amendments to Section 6159.52 of the bill that should be recommended as follows:

6159.52. It is unlawful for any person or organization to use the term "legal aid," "legal aide," or any ~~variant or similar~~ *confusingly similar* name in any firm name, trade name, fictitious business name, or any other designation, or on any advertisement, letterhead, business card, or sign, unless it is a legal aid organization. *Any fair use, including a nominative or descriptive fair use, or noncommercial use, of the terms "legal aid," "legal aide," or any similar terms, shall not be actionable under this section.*

The Bar has also consistently supported efforts to expand and ensure access to justice for all Californians. Because this bill seeks to expand the provisions of interpreter services as discussed in the "Action Plan," the measure is consistent with those goals.

Recommendation: Support; inform author's office of suggested amendments as discussed above.

4. [SB 1407 \(Perata\)](#) (As amended April 28, 2008) – Court Facilities Financing.

Status: Senate Appropriations.

Description: According to the Judicial Council, with the passage of the Trial Court Facilities Act of 2002 and AB 1491 (Jones) in April 2008, the state is now completing the process of taking responsibility for all of California's 450 courthouses. Many buildings which house California's courts are in a critical state of disrepair and antiquated design. Inadequate security has created dangerous conditions that place children, jurors, witnesses, litigants, visitors and court employees at risk. Ninety percent of court facilities need improvement.

To support the construction, renovation and debt service on issued bonds, SB 1407 increases certain filing fees, and specified criminal fines and penalties and allocates the new generated revenues to support the construction and bond financing of trial court facilities. The additional fees include:

- A \$40 penalty imposed on all criminal convictions
- A \$35, \$30 and \$25 increase in first paper filing fees depending on the type of case
- A new \$2.00 fee in addition to the \$1.50 State Court Construction Parking Penalty
- A \$5.00 for each \$10.00 of the base fine on certain criminal violations
- A \$40 increase of the Traffic Violator School fee

Recommendation: Support.

5. [SB 1608 \(Corbett, et.al\)](#) – Persons with Disabilities; Equal Access Rights and Civil Actions.

Status: Senate Appropriations.

Description: SB 1608 would, among other things, establish a special procedure for complaints filed that allege construction-related accessibility violations of the full and equal access laws, including violations of Civil Code 51, 54, 54.1, or 55. Of interest to the Bar and its regulatory responsibilities related to attorney conduct, the bill would require an attorney to include in any demand for money letter or a complaint filed, a specified written advisory to defendant of certain rights and obligations.

Section 2 of the bill would codify new Civil Code sec. 55.3 requiring an attorney to provide a written advisory with certain demands for money that are sent to, or served upon, a defendant. Paragraph (b) sets forth the text of the required advisory and includes the following language:

"If you choose to hire an attorney to represent you, the attorney who sent you the demand for money or complaint is prohibited from contacting you further unless your attorney is present or your attorney has given the other attorney permission

to contact you. If the other attorney does try to contact you, you should immediately notify your attorney."

This language seems to be a client advisory concerning the prohibition against improper contacts with a represented party found in Rule of Professional Conduct 2-100. Rule 2-100, in part, provides that:

"(A) While representing a client, a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer."

A close review of the language shows a slight inconsistency between the actual standard in the rule and the proposed description in the advisory. The rule requires consent but the advisory suggests that either consent or the presence of the defendant's attorney is sufficient. While the presence of a defendant's attorney may be construed to be implied consent or acquiescence to otherwise ex parte communications by a plaintiff's attorney, that would be a factual issue requiring proof in order to avoid a violation of the rule. Accordingly, the language of the advisory should be revised to delete "is present or your attorney" to more precisely track the standard in the rule.

Recommendation: No position; recommend amendment per the foregoing.

FISCAL/STAFF IMPACT

None.

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

None.

RECOMMENDATION

The State Bar's Office of Governmental Affairs has reviewed the legislation described above, and proposes that the Board Committee on Stakeholder Relations recommend that the Board of Governors take the following positions: 1) No Recommendation on AB 1725 (Lieu), subject to Board discussion; 2) take no position but express concerns on AB 2095 (Davis); 3) support AB 3050 (Judiciary) and suggest amendments; 4) support SB 1407 (Perata; and 5) take no position on SB 1608 (Corbett, et.al) but recommend amendment.

RESOLUTION

If the Board Committee on Stakeholder Relations agrees with the above recommendation, the following resolution is suggested:

RESOLVED, that the Board Committee on Stakeholder Relations recommends that the Board of Governors:

- o _____ AB 1725 (Lieu), which would remove the discretionary authority of the Bar to disclose the fact that a person rated “Not qualified” by the JNE Commission had been appointed by the Governor, and instead require the Bar to make the information public after notice to the appointee.
- o Takes no position on AB 2095 (Davis), but expresses its concerns that the provision requiring specified training of JNE Commission members might interfere with the effective training currently provided to JNE members.
- o Supports AB 3050 (Judiciary), which would create a cause of action for the misuse of the name “legal aid”, and suggest technical amendments.
- o Supports SB 1407 (Perata), which would support the construction, renovation and debt service on issued bonds for trial court facilities through increases in certain filing fees and specified criminal fines and penalties and allocates the new generated revenues to support the construction and bond financing.
- o Takes no position on SB 1608 (Corbett, et. al), which, among other things, establishes a special procedure for complaints filed that allege construction-related accessibility violations of the full and equal access laws, including violations of Civil Code 51, 54, 54.1, or 55. However, recommends technical, clarifying amendments.

If the Board of Governors concurs with BCSR’s recommendation, the following resolution is suggested:

RESOLVED, that, upon recommendation of the Board Committee on Stakeholder Relations, the Board of Governors hereby:

- o _____ AB 1725 (Lieu), which would remove the discretionary authority of the Bar to disclose the fact that a person rated “Not qualified” by the JNE Commission had been appointed by the Governor, and instead require the Bar to make the information public after notice to the appointee.

- o Takes no position on AB 2095 (Davis), but expresses its concerns that the provision requiring specified training of JNE Commission members might interfere with the effective training currently provided to JNE members.
- o Supports AB 3050 (Judiciary), which would create a cause of action for the misuse of the name “legal aid”, and suggest technical amendments.
- o Supports SB 1407 (Perata), which would support the construction, renovation and debt service on issued bonds for trial court facilities through increases in certain filing fees and specified criminal fines and penalties and allocates the new generated revenues to support the construction and bond financing.
- o Takes no position on SB 1608 (Corbett, et. al), which, among other things, establishes a special procedure for complaints filed that allege construction-related accessibility violations of the full and equal access laws, including violations of Civil Code 51, 54, 54.1, or 55. However, recommends technical, clarifying amendments.