

AGENDA ITEM

MOC IIIF

Sustainable Practice
Initiative - Request for
Release for Public
Comment

DATE: June 18, 2008

TO: Board Committee on Member Oversight

FROM: State Bar Task Force on Sustainable Practice

SUBJECT: Sustainable Practice Initiative - Request for Release for Public Comment

ATTACHMENTS: Attachment 1: Agenda Item MARCH 142: Creation of a State Bar Task Force on Sustainable Practice
Attachment 2: Roster of the State Bar of California Task Force on Sustainable Practice
Attachment 3: State Bar of California Lawyers Eco-Pledge and Law Office Sustainability Policy

EXECUTIVE SUMMARY

In March 2008 (and at the request of the President) the Board of Governors ("Board") created a State Bar Task Force on Sustainable Practice ("Task Force") with the overall goal of increasing the environmental sustainability of law office practices in California. The Task Force was charged with creating a set of standards for environmentally sustainable law practice, *for voluntary adoption by its members*, with recommendations for law office practice in a variety of circumstances—from solo practitioners to large firms to non-profit organizations with limited resources.

This memorandum reports our activities to date and sets out our recommendations for Board action. The State Bar Task Force on Sustainable Practice requests that the Board Committee on Member Oversight release the attached policies for a 45-day public comment period, from July 12, 2008 through August 25, 2008.

Board members with questions on this item may contact Teri Greenman at (415) 538-2454 or teri.greenman@calbar.ca.gov

BACKGROUND

On March 7, 2008, the Board of Governors created a State Bar Task Force on Sustainable Practice. The Task Force was charged with a primary goal of increasing the environmental sustainability of law office practices in California; a secondary goal of educating California bar members about environmental sustainability and improving environmental performance of California courts; and a tertiary goal of recommending standards for incorporating sustainability by other rulemaking bodies (Attachment 1).

The Task Force is comprised of eight members with one staff liaison based in San Francisco (Attachment 2). The core members are environmental lawyers representing private law firms, government and corporate law offices in Northern and Southern California, as well as sustainability professionals and others with relevant technical expertise. Additional members may be invited to join the Task Force towards the end of the development process to focus on publicizing the standards and promoting their adoption.

SUMMARY OF PROPOSAL

The Task Force has held several telephone conferences, one in-person meeting in San Francisco, and has communicated extensively by email with the understanding that the primary goal is the development of standards for environmentally sustainable law practice, which will be disseminated to California State Bar members for voluntary adoption.

We foresee the following as the basic program: members, firms or law departments who have adopted and implemented a California State Bar Law Office Sustainability Policy would be able to claim State Bar recognition through the licensing of a “tag line” and logo to be used in advertising and promotional materials, and perhaps would be eligible for other forms of State Bar recognition.

Existing Law Practice Sustainability Programs

As a first step in our work, we reviewed three existing bar association sustainability programs: the ABA/EPA Climate Challenge (<http://www.abanet.org/envIRON/climatechallenge/>); the Massachusetts Bar Association Lawyers Eco-Challenge (<http://www.massbar.org/about-the-mba/initiatives/lawyers-eco-challenge/>); and the Oregon Lawyers for a Sustainable Future’s Model Law Office Sustainability Policy (<http://www.earthleaders.org/olsf>). We found a number of common themes in these three policies and standards, all of which relate, in one way or another, to resource conservation (especially paper usage and energy) and waste reduction.

Self Certification or Third Party Certification?

The Task Force then considered the question of whether compliance with any set of standards should be on the “honor system,” i.e., self-certification, or whether compliance should be subject to a third party audit. We concluded that because the financial resources of the State Bar are limited, a third-party audit program might be too expensive to organize and staff, and therefore we recommend initially a self-certification

approach for the State Bar's sustainability program. We recognize, however, that in the future some State Bar members might be interested in paying for third party sustainability audits, perhaps in exchange for recognition of a higher level of environmental stewardship. If so, the Board might later consider the creation of a second level of certification, which would include a third-party audit and more intensive sustainability standards.

The self-certification approach is used in all three of the existing law office sustainability programs listed above. Such a system, therefore, would likely work well as an initial step for the State Bar.

Sustainability Actions: Mandatory or Elective?

The Task Force recognized that State Bar members practice in widely varying circumstances, from solo practitioners with home offices, firms with thousands of lawyers in multi-tenant high rise offices without utility sub-metering, and non-profit organizations with limited resources. Accordingly, the ability of various members of the legal profession to implement all elements of a comprehensive sustainability policy will vary, as some measures will not be applicable or feasible in every circumstance. Nevertheless, the State Bar should encourage and challenge its members to use their best efforts to achieve the sustainable practices set out in the voluntary standards.

Because we are recommending self-certification and the "honor system," each State Bar member, law firm or department should determine, in good faith, the feasibility of individual sustainability actions and the State Bar should encourage these organizations to adopt as many feasible measures as practicable.

State Bar Operations

We considered the extent to which the State Bar, including State Bar offices and meetings sponsored by the State Bar and State Bar Sections, could implement sustainable business practices. Because operations of the State Bar could be made more sustainable, we recommend that the State Bar go through a process of analyzing its resource consumption and waste stream to determine the viability of various steps to decrease environmental impacts from State Bar operations.

To make the State Bar's operations more sustainable in a cost-effective and efficient manner, we recommend that it engage with the Bay Area Green Business Program (<http://www.greenbiz.ca.gov/>), which offers free sustainability analysis and resources to government agencies as well as businesses. Alternatively, the State Bar could hire a third-party consultant in this subject area. In addition, there are many resources available to help the State Bar and its Sections plan "green meetings" (e.g., the US EPA's "Green Meetings Initiative" <http://www.epa.gov/oppt/greenmeetings/index.htm>).

Secondary Task Force Goals: MCLE, Sustainable Courts

The Task Force's secondary goals are to create MCLE-eligible sustainability training to members of the State Bar, and to consider various actions that the judiciary could take to reduce the environmental impact of the courts. We recommend that the State Bar

consider those actions next year, as a second phase of the work of the Task Force, or perhaps as an internal State Bar staff project.

Recommendations

We recommend that the Board adopt the following policies and take the following actions:

1. **Policy:** The State Bar will strive to mitigate the environmental impacts of its activities by incorporating environmentally responsible practices into all of its activities, to the fullest extent practicable. This will include making meetings and events more sustainable, encouraging the Sections to do the same and by mandating resource conservation and waste stream reduction within the State Bar's facilities and operations.

To help implement this policy, we recommend that the State Bar engage the services of qualified third-party sustainability resources or consultants, such as the Bay Area Green Business Program or other free or for-profit services.

2. **Policy:** The State Bar will encourage and challenge its members to incorporate sustainability into law practice by the adoption and implementation of the attached State Bar of California Law Practice Sustainability Policy (the "Sustainability Policy"), attached hereto as Attachment 3. Members and firms who adopt and implement the Sustainability Policy will receive recognition from the State Bar as having taken the "California Lawyers Eco-Pledge" (or similar name) and will be authorized to use this description and related logo in law practice marketing.

To help implement this policy, we recommend that the State Bar (1) develop an attractive Eco-Pledge logo to accompany the tag line, and (2) promote the Sustainability Policy, Eco-Pledge, and logo through the California Bar Journal the State Bar web site, and other appropriate means of publicity.

3. **Policy:** The State Bar will seek to work with the California Judicial Council to incorporate sustainability standards into the operation of the State's courts. The State Bar will (1) support the creation of a model Standing Order on Sustainability (possibly, with state and federal variants) for potential adoption by individual judges in California, and (2) propose rule changes to improve environmental performance of California state court practice in such areas as: increasing recycled-content percentage requirement for paper used in court filings (see Cal. Rule of Court 2.101); allowing filing of double-sided copies of certain documents (e.g., non-chambers copies); increasing e-filing and eservice of court documents and increasing use of court calls in lieu of in-person hearings for non-substantive items (e.g., certain status conferences).
4. **Policy:** The State Bar will develop sustainability MCLE, with such sustainability education eligible to satisfy up to 3 hours of MCLE in each compliance period.

LENGTH OF PUBLIC COMMENT PERIOD AND REASON

A public comment period of 45 days is requested to seek input from Bar members from different practice areas across the state. The comment period would run from July 12, 2008 to August 25, 2008.

After public comment, the Task Force will make a final recommendation to the Board of Governors for action at the September Board meeting.

EFFECTIVE DATE OF PROPOSAL

Immediately following Board approval.

FISCAL IMPACT

Publication of the proposed State Bar of California Sustainability Policies is not expected to result in any significant implementation costs to the State Bar. However, implementation of voluntary sustainability programs by the State Bar, such as green meeting and conservation initiatives, often result in significant cost savings.

Although this was originally considered as a general fund expenditure, this will now be funded through non-mandatory dues sources.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

There is no known Board Book impact.

PROPOSED BOARD COMMITTEE ACTION

Should the Board Committee on Member Oversight agree with the proposed recommendation, adoption of the following resolution would be appropriate:

RESOLVED, that the Board Committee on Member Oversight authorizes for publication for a forty-five day comment period the proposed State Bar of California Sustainability Policies in the form attached; and it is

FURTHER RESOLVED that publication of the foregoing is not, and shall not be construed as, a recommendation of approval by the Board Committee.