

AGENDA ITEM

SEPTEMBER 113

Proposed Voluntary State
Bar Eco-Pledge and
Voluntary Law Office
Sustainability Policy -
Following Public Comment

DATE: September 24, 2008

TO: Board Committee on Operations, Board of Governors

FROM: State Bar Task Force on Sustainable Practice

SUBJECT: Proposed Voluntary State Bar Eco-Pledge and Voluntary Law Office Sustainability Policy - Following Public Comment

VOLUNTARY ECO-PLEDGE AND VOLUNTARY LAW OFFICE SUSTAINABILITY POLICY

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: Voluntary State Bar of California Lawyers Eco-Pledge and Voluntary Law Office Sustainability Policy

Attachment 4: Agenda Item MOC IIIF: Sustainable Practice Initiative - Request for Release for Public Comment

Attachment 5: Public Comments Received

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") and charged it with creating a set of *voluntary* standards for environmentally sustainable law practice with recommendations for law office practice in a variety of circumstances – from solo practitioners to large firms to non-profit organizations with limited resources.

A DRAFT State Bar of California Lawyers Eco-Pledge and Law Office Sustainability Policy was circulated for a 45-day public comment period, from July 12, 2008 through August 25, 2008 (Attachment 4). A total of 19 public comments were received – 3 negative and 16 positive.

This agenda items returns the proposal from public comment. The Task Force considered the comments, made minor revisions in response to these comments, and now recommends the Board adopt the revised Voluntary State Bar of California Lawyers Eco-Pledge and Voluntary Law Office Sustainability Policy (Attachment 3).

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

SUBJECT/ISSUE

- Should the State Bar have a sustainability policy?
- Should the State Bar adopt the recommendations in Attachment 3?

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

The basic program is as follows: members, firms or law departments who have voluntarily opted to adopt and implement 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

The Task Force 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>). They 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 recommends the State Bar only implement voluntary standards. The Task Force recognizes 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 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.

SUMMARY OF PUBLIC COMMENTS RECEIVED

The State Bar received 19 comments on the State Bar of California Lawyers Eco-Pledge and Law Office Sustainability Policy – 3 negative comments and 16 positive comments. This agenda item provides brief summaries of the comments. Actual comments are attached to this agenda item as Attachment 5.

Negative comments

Robert K. Hillison, Attorney, Caswell Bell & Hillison LLP. Proposal is objectionable and should not be adopted. The adoption of the proposal “becomes a *de facto* mandate on all members.” This proposal does not advance the interests of the State Bar or its members.

Michael Gilfix, Attorney, Gilfix & La Poll Associates. Opposed to the State Bar of California Lawyers Eco-Pledge and Law Office Sustainability Policy because attorneys do not need another reporting responsibility and do not need the State Bar overseeing how attorneys deal with sustainability issues. State Bar dues should not be used in this manner and the proposal is not an appropriate area of involvement for the State Bar.

Edward Vaisbort, Attorney, Litchfield Cavo LLP. Opposed to the State Bar of California Lawyers Eco-Pledge and Law Office Sustainability Policy because it is not an appropriate use of State Bar dues and the “McCarthyistic ‘pledge’” is unrelated to the purpose of the State Bar.

Positive comments

Karen Jefchak, Attorney. The State Bar should have a sustainability policy; however, the State Bar should establish minimum mandatory standards. Voluntary standards alone are not enough.

Linda Brughelli, Chair Green Office-DOJ, California Department of Justice. The California Office of the Attorney General/Department of Justice supports the leadership demonstrated by the State Bar to encourage sustainable business practices among its member law firms and legal offices. The DOJ looks forward to taking the EcoPledge and encourages the state Bar to consider incorporating some minimal expectations from members who volunteer to take the EcoPledge.

Jodi Smith, Chair, State Bar Environmental Law Section on behalf of the Environmental Law Section Executive Committee. Supports the Sustainable Practice Initiative and urges the Board of Governors to adopt the recommendations of the Task Force. The State Bar Environmental Law Section also volunteers to assist with this Initiative.

Bryan Pease, Attorney. Supports the Lawyer's EcoPledge and Law Office Sustainability Policy.

David Hayes, Global Chair, Environment, Land & Resources Department, Latham & Watkins LLP. Applauds the State Bar's leadership with efforts to increase environmental awareness and responsibility through the adoption of the voluntary Lawyer's EcoPledge and Law Office Sustainability Policy. Agrees with the flexible approach, and its recognition that lawyers and firms should take steps that make the most sense for them. Discusses Latham & Watkins' Sustainable Measures and Recycling Tactics ("SMART") initiative, which is focused on reducing the firm's impact on the environment, with a special focus on conserving natural resources and energy, and operating in a sustainable manner.

Bob Nicksin, Chair, Environmental Law Section, Los Angeles County Bar Association. Commends the State Bar for its leadership and endorses the Law Office Sustainability Policy. Suggests (1) establishing different tiers for recognition, (2) providing additional examples of sustainable programs that have been implemented by different sectors, (3) including support of all green energy not just wind energy, and (4) adding a category for "Sustainability-Related Public Service." The LACBA Environmental Law Section also volunteers to assist with MCLE programs and coordinating with the LA County Superior Court to develop and implement an appropriate sustainability program.

Ann Bradley, Member Silver Lake Chamber of Commerce Green Committee. Supports the State Bar's efforts and the Lawyer's EcoPledge and Law Office Sustainability Policy.

Kevin Shipp, Attorney, Rogers Joseph O'Donnell. Supports the Lawyer's EcoPledge and Law Office Sustainability Policy.

Kenneth Brooks, Attorney. Supports the Lawyer's EcoPledge and Law Office Sustainability Policy, but does not support the creation of a logo.

Aleka Eisentraut, Attorney, Wendel, Rosen, Black & Dean LLP. Supports the Lawyer's EcoPledge and Law Office Sustainability Policy.

Pamela J. Evans, Coordinator, Alameda County Green Business Program. Supports the Lawyer's EcoPledge and Law Office Sustainability Policy and.

Laura B. Renger, Attorney, Southern California Edison. Supports the Lawyer's EcoPledge and Law Office Sustainability Policy.

Frank J. Cooley, Attorney, Southern California Edison. Supports the Lawyer's EcoPledge and Law Office Sustainability Policy.

Sarah r. Houghland, Attorney, Wendel, Rosen, Black & Dean LLP. Supports the Lawyer's EcoPledge and Law Office Sustainability Policy.

Elizabeth M. Taylor, Attorney, Brown & Winters. Supports the Lawyer's EcoPledge and Law Office Sustainability Policy. Brown & Winters was the first law office to join the San Diego Area Green Business Program.

Garret D. Murai, Attorney, Wendel, Rosen, Black & Dean LLP. Supports the Lawyer's EcoPledge and Law Office Sustainability Policy.

TASK FORCE'S RESPONSES TO PUBLIC COMMENTS RECEIVED

The Task Force considered all written comments. Key responsive revisions are listed below. No additional public comment period is required because modifications were only made in response to comments and do not raise new topics.

The document's title "State Bar of California Lawyer's EcoPledge and Law Office Sustainability Policy" was changed to "Voluntary State Bar of California Lawyer's EcoPledge and Voluntary Law Office Sustainability Policy" to make it clear that these initiatives are purely voluntary.

In the Section titled "Reduce Energy Usage," the guideline regarding purchase of blocks of new wind energy was expanded to include "other green or renewable energy."

A Section titled "Sustainability-Related Public Service" was added and includes the following suggestions: (a) Provide pro bono services to environmental groups or groups promoting or facilitating sustainable practices and (b) Volunteer to assist other legal providers with implementing sustainable practices and volunteer to teach other legal providers about sustainability practices.

TASK FORCE'S ADDITIONAL COMMENTS ON PUBLIC COMMENTS RECEIVED

The Task Force has carefully considered the comments received criticizing the proposed EcoPledge and Sustainability Policy as an improper activity for the State Bar. The Task Force respectfully disagrees for the following reasons.

- First, member dues are not being expended to promote this program. The Task Force consists of volunteers and is funded by non-mandatory dues.
- Second, any actions suggested by the Task Force are purely voluntary and are by no means mandatory – nor, in the view of the Task Force, should they ever be mandatory.
- Third, the Task Force does not view the program as a "top-down" exercise in "political correctness." Rather, many State Bar members want to implement

sustainable policies, and obtain recognition for it, because their clients want them to do so.

Over the past 20 years or so there has emerged in the US a well-studied, well-defined consumer demographic: consumers who (1) value the health of the planet and the well-being of future generations, and (2) make purchasing decisions based, to some extent, on those values. Many businesses who have recognized and marketed to this demographic generally have prospered. Today (as is evidenced by even a cursory examination of any popular magazine or publication) many, if not most, businesses are tailoring their products or services to this consumer.

Those companies, and those consumers, need lawyers. And in making their decisions to hire lawyers, they consider sustainability as a factor in their choice. As more clients and citizens are demanding that attorneys, law firms, and governmental law offices take action to make their operations more sustainable, these law offices are looking for ways to demonstrate their commitment to practicing law in a sustainable manner.

By implementing sustainable practices, State Bar members are responding to client preferences, which is the essence of free market capitalism. For this reason, the Task Force views our recommended program in large measure as a “bottom-up,” free-market response to client preferences. The proposed Voluntary State Bar of California Lawyer’s Eco-Pledge and Voluntary Law Office Sustainability Policy is a good first step toward providing these bar members with a way to show their sustainability commitment to their clients. Numerous State Bar members are asking the State Bar to provide just this sort of leadership.

- Fourth, regarding global climate change, personal opinions about whether global climate change is occurring or whether humans are causing it do not matter in light of AB 32. When enacting AB 32 (the Global Warming Solutions Act of 2006), the California Legislature proclaimed that “[g]lobal warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California.” Cal. Health & Safety Code § 38501(a). The Legislature went on to list numerous potential adverse effects to California due to global climate change and set aggressive goals for reducing levels of greenhouse gas emissions in the state of California over the next decades. Specifically, the bill mandates reduction of statewide greenhouse gas emissions to the equivalent of 1990 levels by the year 2020 (a reduction of approximately 25 percent from forecast emission levels). By adopting the Voluntary State Bar of California Lawyer’s EcoPledge and Voluntary Law Office Sustainability Policy and educating members of the State Bar about simple steps they can voluntarily opt to take to make their practices more sustainable, the State Bar can provide a mechanism to help the legal profession do its part to comply with AB 32.
- Finally, implementing the provisions suggested in the Voluntary State Bar of California Lawyer’s EcoPledge and Voluntary Law Office Sustainability Policy has resulted in significant cost savings for law practices that already have voluntarily opted to take such steps. When it costs less to provide legal services,

then our members will be more able to provide lower cost legal services to a broader range of Californians – which is part of the mission of the State Bar.

Thus, the Task Force believes when all these factors are considered, on balance, the State Bar should adopt the Voluntary State Bar of California Lawyer's EcoPledge and Voluntary Law Office Sustainability Policy.

Final 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 its members to incorporate sustainability into law practice by the adoption and implementation of the attached Voluntary State Bar of California Law Practice Sustainability Policy (the "Sustainability Policy"), attached hereto as Attachment 3. Members and firms who voluntarily opt to 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. Again, any participation in this program will be purely voluntary.

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.

EFFECTIVE DATE OF PROPOSAL

Immediately following Board approval.

FISCAL IMPACT

Publication of the proposed State Bar of California Voluntary State Bar of California Lawyers Eco-Pledge and Voluntary Law Office Sustainability Policy 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/BOARD RESOLUTIONS

If the Board Committee on Operations agrees with the proposed recommendations, adoption of the following resolution would be appropriate:

RESOLVED, following publication for comment and consideration of comments received, that the Board Committee on Operations recommends that the Board of Governors of the State Bar of California adopt the Voluntary State Bar of California Lawyers Eco-Pledge and Voluntary Law Office Sustainability Policy in the form attached, to be effective September 24, 2008.

PROPOSED BOARD RESOLUTION

Should the Board of Governors concur with the recommendation of the Board Committee on Operations, adoption of the following resolution would be appropriate:

RESOLVED, following publication for comment and consideration of comments received, and upon recommendation of the Board Committee on Operations, that the Board of Governors of the State Bar of California hereby approves Voluntary

State Bar of California Lawyers Eco-Pledge and Voluntary Law Office Sustainability Policy in the form attached to these minutes and made a part hereof, to be effective September 24, 2008.