



THE STATE BAR
OF CALIFORNIA

INTER-OFFICE
COMMUNICATION

Date: June 22, 2009

To: Members of the Board Committee on Regulation, Admission and Discipline

From: Russell G. Weiner, Interim Chief Trial Counsel

Subject: Identification of pending projects or proposals that will ensure the public protection mission of the Office of the Chief Trial Counsel

EXECUTIVE SUMMARY

The Board Committee on Regulations, Admissions and Discipline Oversight (“RAD Committee”) has requested that the Office of the Chief Trial Counsel provide an informational item identifying policy and office enhancements (OCTC pending projects list) that will ensure that the vigorous approach to public protection reflected over the last four years is unabated. This agenda item provides a listing of initiatives, proposals and/or projects, among others that may be appropriate, that will be presented to the RAD Committee over the coming months and years to continue and enhance its public protection mission. This item is presented for informational purposes at the request of the RAD Committee and requires no action at this time by either the RAD Committee or the Board of Governors.

The following is a list of projects or proposals that were in progress or had been previously identified by the previous Chief Trial Counsel for the improvement, efficiency or enhancement of the State Bar’s disciplinary and regulatory systems. As the Interim Chief Trial Counsel, I affirm and support these proposed reforms and improvements to our system.

1. Amend rule 75 of the Rules of Procedure to require an Early Neutral Evaluation Conferences only if requested by both parties.
2. Amend the Rules of Procedure relating to discovery to require an open and mutual exchange of discovery in place of the time-consuming and resource intensive discovery period required under the current rules.
3. Amend the Rules of Procedure/Practice to require State Bar Court trials to be conducted on consecutive days until completed.
4. Streamline the subpoena process for obtaining financial records.

5. Engage in a comprehensive review and revision of the Rules of Procedure, in conjunction with the State Bar Court, to streamline and simplify the discipline process and to make proceedings more timely and efficient.
6. Propose revisions to the State Bar Act and Rules of Procedure to improve the process for seeking inactive enrollment pursuant to Bus. & Prof. Code section 6007(c).
7. Propose revisions to the Business and Professions Code to permit final fee arbitration decisions to be admitted into evidence for limited purposes in State Bar discipline proceedings.
8. Create an Attorney Surrogate or Appointee Program that would require attorneys to annually designate another member or “surrogate” to take appropriate steps in the event of the member’s sudden inability to practice due to death, disability or disciplinary action. Those that decline such designation would be required to pay an additional annual fee to the State Bar to undertake whatever actions may be necessary (e.g., a 6180/6190 proceeding) in the event of the member’s death, disability or disqualification from practice. This would reduce the number of 6180/6190 proceedings that the State Bar is currently required to undertake.
9. Examine and propose appropriate modifications to the Standards for Attorney Sanctions for Professional Misconduct: The “Sanction Standards” have not been significantly modified or examined since their adoption in 1986
10. Propose amendments to the Rules of Procedure that will simplify probation revocation proceedings to make them more efficient and shorten the time period for their adjudication and disposition. The current probation revocation rules in State Bar proceedings are cumbersome and extremely paper intensive.
11. Streamline the Client Security Fund reimbursement process.
12. Implement the recommendations of the California Commission On The Fair Administration Of Justice regarding the additional reporting of misconduct to the State Bar by judges; the inclusion of those additional reportable actions in the State Bar’s Annual Report; and the inclusion in the Annual Report of the number of reportable actions received by the State Bar related to the conduct of prosecutors (distinguishing district attorneys and city attorneys) and defense lawyers (distinguishing public defenders, contract defenders, appointed lawyers, and privately retained lawyers) by County.
13. Work with the Executive Director, the Court Administrator for the State Bar, and the Chair of the Board Committee on Regulation, Admissions, and Discipline (RAD) to develop a set of performance measures that would assist the Board’s review of the performance of the disciplinary system.