

# AGENDA ITEM

**JANUARY 142-** Board Book  
Revisions - Amendments to Lines of  
Authority

**DATE:** December 16, 2009

**TO:** Members, Board Committee on Planning, Program Development  
and Budget  
Members, Board of Governors

**FROM:** Patricia P. White, Chair, Board Committee on Planning, Program  
Development and Budget

**SUBJECT:** Board Book Revisions - Amendments to Lines of Authority

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## **EXECUTIVE SUMMARY**

In this item, the Board Committee on Planning, Program Development and Budget recommends that the Board of Governors clarify existing lines of authority. More specifically, it would recommend that the Board provide that as the legal counsel to the State Bar of California, the General Counsel reports to both the Board of Governors and the Executive Director. It would also recommend that in addition to the Executive Director and the Chief Trial Counsel, the Board through the Board Committee on Operations will conduct with the Executive Director the annual performance evaluation of the General Counsel. Finally, it would recommend that the Board provide that the Executive Director will advise Board Operations Committee of any material change to the terms and conditions of employment or performance of any senior executive.

## **DISCUSSION**

Under existing State Bar policies, authority for personnel administration and management is delegated to the Executive Director. See Board Book, Tab 18, Art. 1, § 3. Existing resolutions of the Board of Governors also provide that the General Counsel is “subject to the executive and administrative authority of the Executive Director in like manner as other Executive Staff” and that the “Executive Director should bring his or her choice for ...General Counsel to the board for approval; otherwise all personnel decisions reside exclusively in the executive director.” Board Book, tab 18, art. 1, § 7. The Board maintains its primary relationship with the staff through the Executive Director, and the Executive Director has “management and administrative authority for Chief Trial Counsel, General Counsel and other executive managers.” Board Book, Tab 18, Art. 3. (“State Bar of California Lines of Authority Policy Statement, Governance Responsibility and Delegation of Management Functions”). Existing policy also

provides that “the Office of General Counsel is and continues to be the designated legal counsel to the State Bar as an entity, including the State Bar’s subentities, subject to the direction of the Board of Governors and its Board Operations Committee” Board Book, Tab 18, Art. 1, § 7. The Board conducts a performance evaluation of only the Executive Director and the Chief Trial Counsel. Performance evaluation of all other senior executives and managers are the responsibility of the Executive Director. Board Book, Tab 18, Art. 3.

**RECOMMENDATION:**

The Board Committee on Planning, Program Development and Budget recommends the following:

- that the Board of Governors by resolution clarify that the General Counsel as counsel to the State Bar of California reports to both the Board of Governors and the Executive Director;
- that the Board further provide that performance evaluation of the General Counsel be made by both the Board and the Executive Director; and
- that the Executive Director will advise Board Operations Committee of any material change to the terms and conditions of employment or performance of any senior executive.

**FISCAL/STAFF IMPACT:**

None

**RULE AMENDMENTS:**

None

**BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT:**

Board Book, Tab 18, Articles 1 and 3 as attached.

**PROPOSED BOARD COMMITTEE ACTION**

**RESOLVED**, that the Board Committee on Planning, Program Development and Budget recommends that the Board of Governors clarify that as legal counsel for the State Bar itself, the General Counsel under the rules of professional conduct reports both to the Executive Director and the Board of Governors; and it is

**FURTHER RESOLVED**, that The General Counsel is subject to an annual performance review by both the Executive Director and the Board, that the Board Committee on Operations be designated, in conjunction with the Executive Director, to conduct the General Counsel's annual performance evaluation and report to the Board; and it is

**FURTHER RESOLVED**, that the Executive Director will advise Board Operations Committee of any material change to the terms and conditions of employment or performance of any senior executive.

## **PROPOSED BOARD ACTION**

**RESOLVED**, upon the recommendation of the Board Committee on Planning, Program Development and Budget the Board of Governors hereby clarifies that as legal counsel for the State Bar itself, the General Counsel under the rules of professional conduct reports both to the Executive Director and the Board of Governors; and it is

**FURTHER RESOLVED**, that The General Counsel is subject to an annual performance review by both the Executive Director and the Board, that the Board Committee on Operations be designated, in conjunction with the Executive Director, to conduct the General Counsel's annual performance evaluation and report to the Board; and it is

**FURTHER RESOLVED**, that the Executive Director will advise Board Operations Committee of any material change to the terms and conditions of employment or performance of any senior executive.

# ATTACHMENT A

## Board Book, as amended.

### STAFFING

#### **Article 1 EXECUTIVE DIRECTOR**

- Section 1 Selection*
- Section 2 Duties*
- Section 3 Administration of Personnel*
- Section 4 Executive Director's Financial Limitations Policy*
- Section 5 Relationship with the Board of Governors*
- Section 6 Government Affairs Representative*
- Section 7 Secretary and General Counsel*
- Section 8 Claims Against the State Bar*
- Section 9 Pursuit Policy for Court-Ordered Discipline Costs and CSF Obligations*
- Section 10 The Executive Director's Annual Performance Evaluation*

#### **Article 2 CHIEF TRIAL COUNSEL**

- Section 1 Relationship with the Executive Director*
- Section 2 Appointment, Term, Qualifications*
- Section 3 The Chief Trial Counsel's Annual Performance Evaluation*

#### **Article 3 LINES OF AUTHORITY**

## **Article 1 EXECUTIVE DIRECTOR**

### ***Section 1 Selection***

The Board of Governors hires the executive director of the State Bar.

**(Source: Board of Governors' Resolutions, May 20, 1997.)**

### ***Section 2 Duties***

The executive director works with the Board Operations Committee to develop and update a description of the executive director's job duties which is adopted by the Board. This description of duties is updated regularly and includes the following:

Support for the Board, including playing an active role in supporting the Board's standing committees and assisting the Board in developing its leadership capability.

External Relations, including speaking on behalf of the State Bar in public forums and maintaining key external relationships.

Strategic Planning and Program Development, including making sure that the State Bar advances its strategic planning process.

Internal Operations and Systems Development, including making sure the State Bar's administrative structure and processes are well developed enough to support high quality operations, making sure there is adequate administrative support, and making sure appropriate direction is provided to staff and consultants employed by the State Bar.

Individual Professional Development, including making sure that the executive director's professional standing and developmental needs are given serious consideration.

Authorizes issuance of certificates of recognition and/or proclamations bearing the President's signature or, if appropriate, that of the requesting Board member, to appropriate persons, groups or staff as long as such requests are made in writing at least three weeks prior to their presentation.

The Executive Director or his or her designee is authorized by the Board of Governors to execute conflict of interest waivers.

**(Source: Board of Governors Resolution Adopting in Principle The Strategic Leadership Action Report, October 21, 2001; Board of Governors' Resolutions October 24, 1987, June 2006, November 2007.)**

### **Section 3 Administration of Personnel**

Personnel administration shall reside exclusively in the Executive Director, except that the Executive Director will advise Board Operations Committee of any material change to the terms and conditions of employment or performance of any senior executive. The Executive Director shall be advised and assisted by the Office of Human Resources in the administration of personnel.

The Executive Director shall be guided by The Rules & Regulations for the Administration of Employer-Employee Relations, the Memoranda of Understanding, The Rules & Regulations Pertaining to the Employment of Executive Staff, and The Rules & Regulations Pertaining to the Employment of Confidential Employees in the administration of personnel.

**(Source: Board of Governors' Resolutions May 20, 1997, September 2004.)**

### **Section 4 Executive Director's Financial Limitations Policy**

The Executive Director shall manage the financial affairs of the State Bar of California in an ethical and prudent fashion:

The Executive Director shall avoid financial conditions that would result in fiscal jeopardy to, or disruption of, the programmatic integrity of the State Bar's services and activities.

The Executive Director shall establish a financially prudent fund reserve in the State Bar's budget.

The Executive Director shall establish a financially prudent technology improvement fund in the State Bar's budget.

The Executive Director shall base salaries, contracts, and other expenditures on appropriate business considerations of the fair market value or cost of such transactions.

The Executive Director shall establish an annual budget within the limitation that expenditure shall not exceed revenue and available funds and present this budget and its rationale to the Board of Governors.

The Executive Director shall annually establish a three year financial plan and present this plan and its rationale to the Board of Governors.

**(Source: Board of Governors' Resolution November 2000.)**

## **Section 5    *Relationship with the Board of Governors***

- (a) The executive director is appointed by and is directly accountable to the Board of Governors as a whole. The executive director under no circumstances reports to either an individual volunteer president/board chair or any other individual officer of the Board or to a particular board committee.
  
- (b) The Board's domain is proactive, strategic leadership and governance at the highest level rather than programmatic or operational details. The executive director takes individual responsibility for helping the Board realize its leadership potential and, with the Board focused on high level leadership, need not encounter Board activity in exercising appropriate executive prerogatives in connection with the operation of the institution.
  
- (c) The Board Operations Committee is the committee which administers the development and administration of the executive director/board relationship. The Operations Committee's functions in this regard include:
  - (1) Designing and overseeing the process of recruiting the executive director in the event of a vacancy.
  
  - (2) Assuring that the executive director's job duties are regularly updated to ensure completeness, accuracy and the appropriate "fit" with the organization and its needs.
  
  - (3) Developing, with the executive director, specific leadership targets and goals and evaluating the executive director's performance against those goals.

(Source: Board of Governors' Resolution Adopting in Principle The Strategic Leadership Action Report, October 21, 2001.)

## **Section 6    *Government Affairs Representative***

The State Bar's Government Affairs representative(s) and the Office of Government Affairs shall be subject to the executive and administrative authority of the Executive Director in like manner as other Executive Staff.

(Source: Board of Governors' Resolution, September 2004.)

## **Section 7    *Secretary and General Counsel***

- (a) The Secretary and General Counsel, and the respective offices of each, shall be subject to the executive and administrative authority of the Executive Director in like manner as other Executive Staff.

(Source: Board of Governors' Resolution, May 20, 1997.)

- (b) The Executive Director should bring his or her choice for Secretary and General Counsel to the board for approval; otherwise all personnel decisions reside exclusively in the executive director.

(Source: Board of Governors' Resolution, May 20, 1997.)

### ***Authority of the General Counsel***

The Board of Governors hereby reaffirms that the Office of General Counsel is and continues to be the designated legal counsel to the State Bar as an entity, including the State Bar's subentities, subject to the direction of the Board of Governors and its Board Operations Committee or the committee designated by the Board to review legal matters. As legal counsel for the State Bar itself, the General Counsel under the rules of professional conduct reports both to the Executive Director and the Board of Governors. Legal advice to the State Bar as an institution, including its subentities and programs, shall in all instances be rendered only by the office of General Counsel, except where outside counsel is retained for specific purposes in compliance with existing protocols for the retention of outside counsel.

(Source: Board of Governors Resolution, June 2000.)

### ***Authorization to File Unlawful Detainer Actions***

The General Counsel, or his or her designee, is authorized to initiate unlawful detainer actions against State Bar tenants and sub-tenants upon determination that such actions are appropriate and necessary to protect the State Bar's real property interests and where the action at issue will not result in serious political or operational consequences for the Bar. The General Counsel shall inform the Board Operations Committee, or the committee designated by the Board to review legal matters, in confidential reports at its regularly scheduled meetings of any unlawful detainer actions filed and the status of these actions.

(Source: Board of Governors' Resolution, June 2003.)

### ***Authorization to Arbitrate Under ICANN Domain Name Dispute Resolution Policy***

The General Counsel is authorized to initiate Internet Corporation for Assigned Names and Numbers (ICANN) administrative and arbitration proceedings under the Uniform Domain Name Dispute Resolution Policy (UDRP) upon a determination that such actions are appropriate and necessary to protect the State Bar's trademarks, service marks, and certification marks and where the action at issue will not result in serious political or operational consequences for the Bar. The General Counsel or her designee shall report to the Committee on Board Operations on any ICANN-UDRP administrative and arbitration proceedings.

**(Source: Board of Governors' Resolution, Oct 2004.)**

### ***Authorization To Seek Restraining Orders***

The General Counsel is authorized to seek restraining orders upon a determination that such actions are appropriate and necessary to protect the State Bar's employees and where the action at issue will not result in serious political or operational consequences for the Bar. The General Counsel or her designee shall report to the Committee on Board Operations on any petitions filed seeking restraining orders and the status of such actions.

(Source: Board of Governors' Resolution, May 2005.)

### ***Who May Assert Claim of Privilege or Confidentiality***

Any officer of the State Bar is authorized to assert in the name of the State Bar any claim of privilege or confidentiality that might be asserted by the State Bar, including the privilege against disclosing official information contained in Evidence Code section 1040.

(Source: Board of Governors' Resolution, September 1977.)

### ***Claim of Confidentiality – General***

General Counsel, or his or her designee, is authorized to appear on behalf of the State Bar, its officers, employees and agents and take such steps as in his or her judgment he or she deems appropriate for the purpose of preserving the confidentiality of privileged State Bar matters, except that General Counsel is authorized to disclose and permit others to disclose confidential matters, but only to the extent necessary and relevant in his or her judgment to the presentation of such matters.

(Source: Board of Governors' Resolution, September 1977.)

### ***Claim of Confidentiality in a Civil Cause Against the State Bar***

In a civil cause against the State Bar or its officers, employees or agents brought by a person for alleged grievances arising out of an admission, discipline or reinstatement matter, that counsel for the State Bar or for its officers, employees or agents is authorized to disclose otherwise confidential documents or information if relevant to said civil cause in the opinion of counsel for the State Bar and put into issue or otherwise referred to in said cause by the person.

(Source: Board of Governors' Resolution, September 1977.)

## ***Section 8 Claims Against the State Bar***

- (a) For the purpose of facilitating the timely handling and disposition of claims against the State Bar of California submitted pursuant to the California Tort Claims Act (Government Code, §§ 900 et seq.) that the board authorizes the executive director or his or her designee, in consultation with general counsel, to:

- (1) Give written notice of insufficiency of a claim pursuant to Government Code § 910.8; or,
  - (2) Return a claim as untimely filed.
- (b) General Counsel may authorize settlement of claims or cases that do not implicate a material policy issue up to and including the amount of \$25,000. General Counsel shall keep the Chair of the Board Operations Committee or the committee designated by the Board to review legal matters, informed on a regular basis of settlement activity. At each regularly scheduled meeting of the Board Operations Committee or the committee designated by the Board to review legal matters, in confidential reports, General Counsel shall inform the Board Operations Committee or the committee designated by the Board to review legal matters, of any settlements reached within this authority level and the reason(s) therefore.
  - (c) The Board Operations Committee or the committee designated by the Board to review legal matters may authorize settlement of claims or cases that do not implicate a material policy issue from the amount of \$25,001 to and including \$50,000. In confidential quarterly reports, the Chair of the Board Operations Committee or the committee designated by the Board to review legal matters, shall inform the Board of Governors of the settlements reached within this authority level and the reason(s) therefore.
  - (d) The Board of Governors may authorize settlement in amounts exceeding \$50,000 or in any matter which implicates a material policy issue for the Bar, upon recommendation of the Board Operations Committee or the committee designated by the Board to review legal matters.
  - (e) For purposes of this policy, a “material policy issue” is one with important political or operational consequences in the future for the Bar.

(Source: Board of Governors' Resolution, November 1978, October 1979, December 1995.)

### ***Section 9 Pursuit Policy for Court-Ordered Discipline Costs and CSF Obligations***

#### (a) Section 1 Purpose

Before April 1, 2007, discipline costs or restitution to Client Security Fund (CSF) ordered against a disciplined lawyer were collected either by including the amount in the billing of the annual membership fees or requiring payment as a condition of reinstatement. On January 1,

2004, changes in the State Bar Act provided that discipline costs and CSF restitution orders could be enforced as money judgments in the civil courts. With the Supreme Court's approval of Rule 9.23 of the California Rules of Court, effective April 1, 2007, the State Bar may now obtain automatic judgments for court-ordered discipline cost and Client Security Fund obligations. The goal of this policy is to have an aggressive, but fair policy to promote resolution of discipline costs and CSF obligations as quickly as possible, to utilize available tools effectively and efficiently collect these debts owed by disciplined California lawyers.

(b) Section 2 Definitions

- (1) "Discipline costs" are the amounts that a member must pay to the State Bar under Business and Professions Code section 6086.10.
- (2) "CSF restitution" refers to amounts that a member must pay to the State Bar under Business and Professions Code section 6140.5, subdivision (d).
- (3) "Debtor" means a member of the State Bar of California who must pay discipline cost to the State Bar or CSF restitution under a discipline order by the Supreme Court or the State Bar Court or an order of the Supreme Court accepting the member's resignation with charges pending.
- (4) "Debt" refers to discipline costs, CSF restitution, or both.

(c) Section 3 No Action ("Do Not Pursue" Status)

The State Bar may designate a matter as "do not pursue" and take no further action against a debtor to enforce a debt under any one of the following reasons:

- (1) The debtor is making timely payments and is not in default under a payment plan approved by the State Bar Court or Supreme Court
- (2) The debtor discharged the obligation in bankruptcy between May 10, 2001 and January 1, 2004, in reliance on *In Re Taggart*, 249 F.3d 987 (9th Cir. 2000)
- (3) The debtor is deceased and the estate has no assets
- (4) The expense to enforce the debt is likely to exceed the amount expected to be collected; or,

(5) Other good cause as determined by the General Counsel.

(d) Section 4 Pursuit Guidelines

Debts not designated as “do not pursue” under section 3 will be enforced under the following guidelines.

- (1) Report debtor to credit reporting or collection agencies if:
  - (A) The debt is older than 10 years; or
  - (B) The debt or aggregate debts are less than \$500.
- (2) File judgments, obtain abstracts of judgment, and record liens against debtors who owe discipline costs and CSF restitution and
  - (A) The debt is less than 10 years and
  - (B) The debt or aggregate debt is \$500 or more.
- (3) Pursue further enforcement of judgment mechanisms as appropriate where the judgment debtor and assets have been located.

(e) Section 5 Compromise

These guidelines do not preclude the State Bar from granting relief under Rules 282 and 285 of the Rules of Procedure and Rule 9.23(c) of the California Rules of Court.

**(Source: Board of Governors' Resolution, July 2007.)**

***Section 10 The Executive Director's Annual Performance Evaluation***

The Executive Director of the State Bar is subject to an annual performance evaluation to be completed by July of each year. The review shall be conducted by a Board Committee designated by the Board, currently the Board Operations Committee. The State Bar's Office of Human Resources and the State Bar's Deputy Executive Director shall assist the designated Board Committee in this process.

(a) Evaluation Criteria

The Executive Director's evaluation is conducted based on performance criteria and competencies and on goals and objectives set by the designated Board Committee. The designated Board Committee, annually sets the Executive Director performance targets and annually evaluates progress in achieving these targets. The performance criteria and competencies for evaluation are: job skills, technological proficiency,

quality performance, quantity of work, leadership, teamwork and collaboration, constituency commitment, communication, fiscal accountability, development and compliance with policies and procedures, strategic perspective/planning, managing change, managing and developing staff, Board/constituency relations, valuing diversity.

(b) Confidentiality

The meetings of the designated Board Committee and all information obtained in the course of the evaluation shall be confidential and shall not be disclosed except as otherwise provided in this article. Sufficient disclosure shall be made to the Executive Director to assure a full opportunity to respond to evaluation material. The identity of the persons providing evaluation material shall not be disclosed.

(c) Timetable and Procedures

Each year, the Board sets the timetable and procedures for conducting the Executive Director's annual performance evaluation. The committee shall meet with the Executive Director as soon as practical in the board year to discuss the performance standards, goals, procedures and timetable. The Board Committee shall set the procedures and meetings during the board year to assure a full and fair evaluation, and shall present its report to the Board in executive session at the July meeting.

(Source: Board of Governors' Resolutions, March 2002, March 2003, March 2004.)

## **Article 2 CHIEF TRIAL COUNSEL**

### ***Section 1 Relationship with the Executive Director***

The executive director shall bring his or her choice for Chief Trial Counsel (subject to Senate confirmation) to the board for approval. The Chief Trial Counsel shall report to the Board of Governors discipline system oversight committee consistent with Business & Professions Code Section 6079.5 on substantive issues pertaining to the discipline enforcement system. The Chief Trial Counsel and the Office of the Chief Trial Counsel shall otherwise be subject to the executive and administrative authority of the Executive Director in like manner as other executive staff.

(Source: Board of Governors' Resolution, May 20, 1997, March 2002, March 2003, March 2004, Business and Professions Code § 6079.1.)

### ***Section 2 Appointment, Term, Qualifications***

The rules governing the appointment, the term, and the qualifications of the chief trial counsel are described in Business & Professions Code section 6079.5 (a) (b) (see State Bar Act, Appendix 3e).

(Source: Bus. & Prof. Code, § 6079.5 (a) and (b).)

### **Section 3    *The Chief Trial Counsel's Annual Performance Evaluation***

Under Board policy, the Executive Director is responsible for evaluating the performance of all State Bar staff. The Chief Trial Counsel position is unique. Under Business & Professions Code Section 6079.5, the Board appoints the Chief Trial Counsel who serves for a term of four years. The Board has delegated to the Executive Director the selection of the Chief Trial Counsel which is then acted upon by the Board. The appointment is subject to the confirmation of the State Senate. The Chief Trial Counsel, by statute, reports to the discipline system oversight committee of the Board and, in connection with the exercise of prosecutorial discretion, does not report to the Executive Director<sup>1</sup>.

At the recommendation of the Executive Director, because of the uniqueness of the Chief Trial Counsel position, the Board, through its discipline oversight and Board Operations Committees, has undertaken the responsibility for conducting the Chief Trial Counsel's evaluation. Recognizing the Executive Director's institutional role in selecting the Chief Trial Counsel, the Chief Trial Counsel's role as a senior member of the Executive Director's management team, and the responsibility of the Executive Director for institutional oversight and administration of personnel, budget, and facilities support functions of the State Bar as a whole, including the Office of the Chief Trial Counsel, the Executive Director sits as a member of the Board Committee on Operations in connection with the Chief Trial Counsel's review. The Chair of the Board Committee on Regulation, Admissions & Discipline chairs the review committee.

(a)    Evaluation Criteria

The Chief Trial Counsel's evaluation is conducted based on performance criteria and competencies and on goals and objectives set by the designated Board Committee. The designated Board Committee annually sets the Chief Trial Counsel's performance targets and annually evaluates progress in achieving these targets. The performance criteria and competencies for evaluation include: job skills, technological proficiency, quality performance, quantity of work, leadership, teamwork and collaboration, public protection commitment, communication, fiscal accountability, compliance with policies and procedures, strategic perspective/planning, managing change, managing and developing period, interpersonal/conflict resolution skills, valuing diversity.

(b)    Confidentiality

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<sup>1</sup> Consistent with statutory authority, the Chief Trial Counsel reports to the discipline system oversight committee and is independent of the Executive Director with respect to the exercise of the Chief Trial Counsel's prosecutorial discretion. The Chief Trial Counsel is subject to the Executive Director's administration of personnel, budget, and facilities support functions which the Executive Director executes in conformity with Board policy.

The meetings of the designated Board Committee and all information obtained in the course of the evaluation shall be confidential and shall not be disclosed except as otherwise provided in this article. Sufficient disclosure shall be made to the Chief Trial Counsel to assure a full opportunity to respond to evaluation material. The identity of the persons providing evaluation material shall not be disclosed.

(c) Timetable and Procedures

Each year, the Board sets the timetable and procedures for conducting the Chief Trial Counsel's annual performance evaluation. The committee shall meet with the Executive Director as soon as practical in the board year to discuss the performance standards, goals, procedures and timetable. The Board Committee shall set the procedures and meetings during the board year to assure a full and fair evaluation, and shall present its report to the Board in executive session at the July meeting.

(Source: Board of Governors' Resolution, March 2002, March 2003, March 2004.)

**Article 3**  
**LINES OF AUTHORITY**  
**State Bar of California**  
**Lines of Authority Policy Statement**  
**Governance Responsibility and Delegation of Management Functions**

The Board of Governors has the fundamental fiduciary responsibility for the health and success of the State Bar of California, with a focused attention on the governing responsibilities for this organization. The governing functions are those that provide the essential direction, resources and structure needed to meet specific needs of our core constituencies: the public, the judiciary, and our lawyer-members. The governing functions are:

**Strategic Direction** – setting a direction for the State Bar of California that reflects needs of our constituencies and the mandate provided by the State of California.

**Resource Development** – developing adequate financial resources that support program activities defined within the organization's strategic plan.

**Financial Accountability** – ensuring that the financial resources of the organization are managed prudently and cost-effectively.

**Leadership Development** – developing the human resources that lead the organization today and in the future, the volunteer leadership structures and hiring of the organization's Executive Director.

The Board recognizes the value and need to hire professional staff to support this organization, and looks at staff members as critical partners in the

organization's success. The Board recognizes the need to delegate to staff the management functions that ensure effective follow-through and implementation of the governance leadership of the Board. The management functions are:

**Program Planning and Implementation** – developing comprehensive plans for implementing the direction established by the Board, with a focus on both output and outcome delivery.

**Administration** – establishing the systems and procedures necessary to support the governance and management of the organization.

To support this delineation of responsibility and authority, the Board agrees to accept responsibility for organizational governance, and to delegate to the staff through its Executive Director the responsibility for organizational management. All planning and implementation strategies will strive to reinforce the appropriate roles of Board and staff, and will work to reinforce the effective integration of the governing and management functions.

### ***Oversight Role***

The Board will provide oversight to the management functions it has delegated, and will conduct regular reviews, audits and evaluations necessary to ensure fulfillment of the responsibility delegated to staff. This oversight role will be done in cooperation with the Executive Director and incorporated into the ongoing operations of the organization.

In addition, the Board will review and evaluate its own performance related to its governing responsibility on a regular basis to ensure the effectiveness of the Board. The Board Committee on Operations will oversee these activities.

### ***Relationship to Executive Director***

To support the effective delegation of management authority to the staff, the Board will maintain its primary relationship with the staff through the Executive Director. The Board will provide such guidance and feedback to the Executive Director as may be needed to support her/his effective management leadership. The Board as a whole has the authority to hire, supervise, and fire the Executive Director, and may do so through its designated leadership of Board President or other designate.

The Board will maintain an advise and consent function with the hiring of the Chief Trial Counsel and General Counsel. The Executive Director will make recommendations for hiring and dismissal of these positions to the Board for their final approval. The Executive Director will be responsible for all other supervision and management functions related to the Chief Trial Counsel and General Counsel, while maintaining the prosecutorial and legal representation independence of these positions.

The Executive Director will be responsible for further staff development issues, including hiring, supervision and firing of staff, and the delegation of responsibility for specific aspects of organizational management. The Board may provide advice to the Executive Director to support her/his management, but will not assume the role of managing other staff members unless there is a compelling reason to do so. Such a step would be considered a temporary and emergency action.

In consultation with the Board president, the Executive Director will assign staff members to provide support to the Board and its various functions. Every effort will be made to make these assignments to reflect the priorities of the strategic and operational plans. The board or committee leadership will provide direction to assigned staff to ensure fulfillment of these board and committee functions.

### ***Effective Communication***

The organization will make a distinction between various types of communication between Board and staff members. Communication between Board and staff with the purpose of providing direction or formalized feedback should funnel through the Board President, who has the primary responsibility for communicating direction and concerns to the Executive Director. Communication between Board and senior staff with the purpose of clarification and general understanding should have no limits or restrictions except as otherwise appropriate to respect time limitations and other professional relationship boundaries. Board member contact to staff other than senior staff should come through a prior referral from a senior staff member.

### **Procedural Elements Defined or Identified for Development:**

*Below are current procedures and several that could be developed to support the policy statement.*

- I. ***Board Oversight Role:***
  - a. ***Board Self Evaluation*** - Although no Board self-evaluation process exists, it is recommended that a process be developed and conducted annually led by the Board Committee on Operations. This review would include both an evaluation of the overall effectiveness of the Board as a body (using assessments and discussions) and individual evaluations of board member performance (using self-evaluations, job descriptions and board contracts). The purpose of these evaluations are to strengthen the effectiveness of the entire Board of Governors, and to give personalized feedback to the individual board members on their performance and how they may be able to best fulfill their responsibilities. The Board President will hold personal discussions with board members unable or unwilling to complete the evaluation process.

- b. **Audit by the California State Auditor**<sup>2</sup> is a financial compliance and performance audit that is conducted every two years by state statute. The audit focuses on the finances, discipline system, and other issues (varying from year-to-year) determined by the auditor. In addition, the audit follows up on concerns and problems highlighted from previous audits, and does a general management review of key functions and investigates those issues

There are no management practices that are outside of the State Auditor's purview. The State Auditor may audit any function including the confidential and non-public files, including the Office of the Chief Trial Counsel and the Office of General Counsel.

The Board of the State Bar of California cannot provide direction to the State Auditor<sup>3</sup> to seek their review of key issues that the Board would like reviewed. The State Auditor function is designed "...to be free from influence of existing state control agencies that could be the subject of audits."

- c. A **financial audit** conducted by independent auditors annually, currently the firm of Deloitte and Touche, reviewing management and governance practices to ensure their compliance with GASB, FASB and other accounting standards. The financial audit is also required by statute.<sup>4</sup>

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<sup>2</sup> Cal Bus & Prof Code § 6145 (2007). (b) The board shall contract with the Bureau of State Audits to conduct a performance audit of the State Bar's operations from July 1, 2000, to December 31, 2000, inclusive. A copy of the performance audit shall be submitted by May 1, 2001, to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

Every two years thereafter, the board shall contract with the Bureau of State Audits to conduct a performance audit of the State Bar's operations for the respective fiscal year, commencing with January 1, 2002, through December 31, 2002, inclusive. A copy of the performance audit shall be submitted within 120 days of the close of the fiscal year for which the audit was performed to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

For the purposes of this subdivision, the Bureau of State Audits may contract with a third party to conduct the performance audit. This subdivision is not intended to reduce the number of audits the Bureau of State Audits may otherwise be able to conduct.

<sup>3</sup> To achieve this mandate, the bureau was organized to fulfill the independence requirements of the Government Auditing Standards issued by the U.S. Comptroller General. Specifically, the second general standard for government auditing states, in part:

"In all matters relating to the audit work, the audit organization and the individual auditors, whether government or public, should be free from personal and external impairments to independence, should be organizationally independent, and should maintain an independent attitude and appearance." (Chapter 3, page 4)

<sup>4</sup> Cal Bus & Prof Code § 6145 (2007) provides that the board shall contract with an independent national or regional public accounting firm for an audit of its financial statement for each fiscal year beginning after

- d. **Internal program review**, conducted on an annual basis and extensively every three years as part of the strategic planning process. The board “oversight” committee(s) using the performance measures developed and put in place by board and staff conducts the program review. Completion of this helps guide some key elements of the strategic planning process.

At its January 2004 Planning Session the State Bar Board of Governors focused on the next steps for putting in place the Board’s Strategic Management Process, a two-track effort to establish performance measures related to (1) the Board’s Long Range Strategic Plan, and (2) internal departmental operations overseen by the Executive Director.

A Staff Working Group on Performance Measures was established to guide the Performance Measures Project. To support the Track I effort, a series of issue meetings were scheduled to invite participation of Board members, advisory committee members, and staff in developing the Strategic Plan performance measures for the plan’s six goal areas: (1) Attorney Admission, Regulation and Discipline; (2) Member Services; (3) Access to Justice; (4) Stakeholder Relations; (5) Leadership and Accountability; and (6) Technology.

**e. Long Range Strategy**

In 2008, the Long Range Strategy document was created by revisiting existing strategic planning documents in order to simplify and clarify the structure, as well as reflect the noteworthy and important values articulated in the existing plan. The Long Range Strategy includes the current State Bar strategies and mandates.

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December 31, 1998. The financial statement shall be promptly certified under oath by the Treasurer of the State Bar, and a copy of the audit and financial statement shall be submitted within 120 days of the close of the fiscal year to the board, the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

The audit shall examine the receipts and expenditures of the State Bar and the State Bar sections, to assure that the receipts of the sections are being applied, and their expenditures are being made, in compliance with subdivision (a) of Section 6031.5, and that the receipts of the sections are applied only to the work of the sections.

The audit also shall examine the receipts and expenditures of the State Bar to ensure that the funds collected on behalf of the Conference of Delegates of California Bar Associations as the independent successor entity to the former Conference of Delegates of the State Bar are conveyed to that entity, that the State Bar has been paid or reimbursed for the full cost of any administrative and support services provided to the successor entity, including the collection of fees or donations on its behalf, and that no mandatory dues are being used to fund the activities of the successor entity.

The intended goals for revising the Strategic Plan were to:

- (1) Simplify and streamline its overall structure;
- (2) Provide for both a Long Range Strategy and a year-to-year Special Focus Areas (i.e., Board Annual Planning Session);
- (3) Articulate both a vision and operational strategies that can be implemented;
- (4) Separate big-picture Board-level strategy (Vision/Policy) from administrative detail;
- (5) Continue to integrate the planning and budget processes.

At its July 11, 2008 meeting, following publication of the Long Range Strategy for a 45-day public comment period, the Long Range Strategy was adopted by the Board of Governors.

In 2007, in response to the Auditor's recommendation, State Bar finance staff developed and implemented a new State Bar budget development process that links departmental budgets to departmental plans. The 2008 budget aligned the Bar's departmental and functional structures and presented basic workload and performance information in the Bar's major program areas. With the 2009 budget, staff continued to develop and report performance measures and activity measures for the Bar's major programs. The Range Strategy sets out the principal goals by functional areas, and links them to the Bar's internal organizational and programmatic structure, and also to the budget process.

- f. ***An Executive Director Performance Evaluation***, conducted annually, provides an analysis of the performance of the Executive Director and her ability to effectively implement the direction established by the Board. Input to the process is both quantitative, based on specific outcomes and outputs developed in the strategic and annual plans, and in the annual work plan of the Executive Director; and qualitative, providing personal feedback through a 360 analysis of the Executive Director among board members, staff members, core volunteers and other key constituents. The process is done more intensively every other year and abbreviated in the off years.

Governing Authorities for Annual Performance Evaluation of The Executive Director, General Counsel, and Chief Trial Counsel

### ***The Executive Director***

By Board resolution, the Executive Director of the State Bar is subject to an annual performance review to be completed by July of each year. The Board Committee on Operations has been designated to conduct the Executive Director's annual performance evaluation and report to the Board. The State Bar's Office of Human Resources and the State Bar's Deputy Executive Director assist the Board Committee on Operations in this process.

### **The General Counsel**

The General Counsel is subject to an annual performance review by both the Executive Director and the Board. The Board Committee on Operations has been designated in conjunction with the Executive Director to conduct the General Counsel's annual performance evaluation and report to the Board. The State Bar's Office of Human Resources and the State Bar's Deputy Executive Director will assist the Board Committee on Operations in this process.

### ***The Chief Trial Counsel***

Under Board policy, the Executive Director is responsible for annually evaluating the performance of all State Bar staff. (Executive Staff, including senior managers, are evaluated each year in October.) The Chief Trial Counsel position is unique. Under Business & Professions Code § 6079.5, the Board nominates the Chief Trial Counsel who, upon confirmation by the California State Senate, serves for a term of four years. The Board has delegated to the Executive Director the selection of the Chief Trial Counsel, which is then acted upon by the Board. The Chief Trial Counsel, by statute, reports to the discipline system oversight committee of the Board and, in matters related to the exercise of prosecutorial discretion, does not report to the Executive Director.<sup>5</sup>

As noted above, because of the uniqueness of the Chief Trial Counsel position, the Board, through its Board Regulation, Admissions and Discipline Oversight Committee and Board Committee on Operations, has undertaken the responsibility for conducting the Chief Trial Counsel's evaluation.

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<sup>5</sup> Consistent with Business & Professions Code section 6079.5, the Chief Trial Counsel reports to the discipline committee and is independent of the Executive Director with respect to the exercise of the Chief Trial Counsel's prosecutorial discretion. The Chief Trial Counsel is subject to the Executive Director's administration of personnel, budget, and facilities support functions, which the Executive Director executes in conformity with Board policy.

The State Bar's Office of Human Resources and the State Bar's Deputy Executive Director assist the Board Committee on Operations in administering the review process.

***Procedures Governing Annual Performance Review of The Executive Director and Chief Trial Counsel***

All communications pertaining to the evaluation process are strictly confidential. Division 4, Chapter 6, Article 5, Section 3 of the State Bar's Administrative Manual provides in this regard:

"The meetings of the committee and all information obtained in the course of the evaluation proceedings shall be confidential, and shall not be disclosed except as otherwise provided herein. Sufficient disclosure shall be made to the evaluatee on request to assure a full and fair opportunity to respond to evaluation material, except that the identity of the persons providing evaluation material shall not be disclosed."

The Evaluation Committee and Board should strictly adhere to this confidentiality requirement.

The President, in conducting the Executive Director's evaluation, chairs the Board Committee on Operations. The Board Regulation, Admissions and Discipline Oversight Committee's Chair chairs the Chief Trial Counsel's Evaluation.

The Office of Human Resources, under the Direction of the Deputy Executive Director staffs and provides administrative assistance in conducting the Executive Director's and Chief Trial Counsel's reviews and is subject to strict confidentiality requirements.

II. ***Relationship to the Executive Director***

- a. ***Executive Director*** – The Executive Director has management and administrative authority for Chief Trial Counsel, General Counsel and other executive managers, while independence is granted for certain functions within these positions. Current policy is quite clear.

"The Executive Director administers staff and facilities of the State Bar subject to the direction and control of the Board of Governors. . . [The Board] holds the State Bar's executive

director accountable [for institutional] financial responsibility...The Secretary and General Counsel, and the respective offices of each, shall be subject to the executive and administrative authority of the Executive Director [Executive Director] in like manner as other senior executives.” (State Bar’s Administrative Manual, Division 8, Chapter 1, Article 1, Sections 1, 2 & 8.) The Executive Director will advise Board Operations Committee of any material change to the terms and conditions of employment or performance of any senior executive.

All personnel are subject to the administration of the Executive Director. This administration is through the Rules and Regulations Pertaining to the Employment of Executive Staff Employees, the Rules and Regulations Pertaining to the Employment of Confidential Employees, and the union negotiated memoranda of understanding. This administration is subject to certain very narrow variations:

- b. **State Bar Court** - It is a responsibility of the Board to assure the adjudicatory independence of the State Bar Court. State Bar Court Judges are not State Bar employees and are not subject to Executive Director or Board administration. The Supreme Court, Legislature, or Governor appoint them pursuant to statute for set terms. Their salary rates are established by statute. The Rules & Regulations Pertaining to the Service of State Bar Court Judges otherwise establish their terms and conditions of employment. The State Bar (through its Executive Director) must provide the State Bar Court with “adequate supporting staff and facilities” and conduct itself otherwise to assure the adjudicatory independence of the State Bar Court.

The State Bar Court Administrative Officer and Chief Court Counsel is the Senior Executive for the State Bar Court. This position is a Senior Executive of the State Bar serving in conformity with the Executive Staff Rules. The State Bar Court Administrative Officer has no independence from the Executive Director except where the adjudicatory independence of the State Bar Court is threatened, “as all executive personnel decisions reside exclusively in the executive director.” Depending upon the nature of such a transgression, the Administrative Officer is to report the transgression to the Board and/or the Supreme Court. (Admin. Man. Div. 8, Art. 1, §4.; See generally, Business & Professions Code §§ 6079.1, 6086.5, 6086.65)

- c. **Chief Trial Counsel** - The Executive Director “bring[s] his or her choice for Chief Trial Counsel (subject to Senate confirmation) to

the Board for approval” who serves as a member of the Executive Director’s Senior Management Team. (Admin. Man. Div.8, Ch. 1, Art. 2.)

The Chief Trial Counsel is the Senior Executive for the Office of the Chief Trial Counsel, the enforcement/prosecutorial arm of the disciplinary system. This position is a Senior Executive of the State Bar serving subject to a statutory term. The qualifications and term of the Chief Trial Counsel are set by statute. By statute, the Chief Trial Counsel “reports to and serves under” the Board discipline system oversight committee “and does not serve under the direction of” the Executive Director. The Chief Trial Counsel is subject to the Executive Director’s institutional administration of personnel, budget, facilities and other institutional matters in conformity with the policy parameters established by the Board.

The terms and conditions of employment for the Chief Trial Counsel are set by the Executive Staff Rules, subject only to the provision that the State Bar (through its Executive Director) must assure the prosecutorial integrity and independence of the Chief Trial Counsel. The Board’s discipline oversight committee administers the Office of the Chief Trial Counsel through the Executive Director except where the prosecutorial independence of the office is threatened. Depending upon the nature of such a transgression, the Chief Trial Counsel is to report the transgression to the Board and/or the Supreme Court. (See generally, Business & Professions Code § 6079.5).

- d. **General Counsel** - The General Counsel is the Senior Executive serving as the State Bar’s Chief Legal officer. As legal counsel for the State Bar itself, the General Counsel, under the rules of professional conduct, reports both to the Executive Director and the Board of Governors. This position is a Senior Executive of the State Bar serving in conformity with the Executive Staff Rules, subject only to the limitations of the duties and responsibilities incumbent upon the attorney-client relationship in the institutional setting. The General Counsel has no independence from the Executive Director on any issue except where mandated by legal and professional duties to the various constituent parts of the institution represented. The General Counsel has the duty to provide accurate and complete legal advice and counsel to the Board and the institution regardless of the consequences. (See generally, Rule of Professional Conduct 3-600.)
- e. **Secretary** - The Secretary [an office currently combined with the position of Executive Director] is the Senior Executive serving as the Board’s administrative officer. This position is a Senior

Executive of the State Bar serving in conformity with the Executive Staff Rules, subject only to the statutory provisions creating the office. (See generally, California Business and Professions Code Sections 6020, 6022, 6024).

- f. **Admissions** - The Senior Executive for Admissions is the Senior Executive overseeing the attorney admissions function. This position is a Senior Executive of the State Bar serving in conformity with the Executive Staff Rules, subject only to the limitation that the State Bar (through its Executive Director) must maintain the integrity of the bar examination and admissions process. The Senior Executive for Admissions has no independence from the Executive Director on any issue except where the integrity of the bar examination and admission process is threatened. Depending upon the nature of such a transgression, the Senior Executive for Admissions is to report the transgression to the Committee of Bar Examiners, the Board and/or the Supreme Court. (See generally, California Business & Professions Code §§ 6076 et seq.; §§ 6060 et seq.).
- g. **Other Staff** - All other staff serve in conformity with the governing terms of the Union negotiated Memoranda of Understanding and/or governing rules and regulations administered by the Executive Director.

### III. **Board and Board Committee Staff Liaisons (Board Committee Coordinators)**

- a. The Executive Director assigns staff members (Board Committee Coordinators), having expertise related to specific board and board committee functions, to support the board and its various functions.

The Executive Director “provides effective liaison and staff support to Board Committees and State Bar Sub-committees to allow them to perform their functions.” (Executive Director Performance Criteria and Competencies, May 2002.)

- b. Any concerns regarding Board support staff should be directed to the Board President and Executive Director. The Executive Director will address the issue directly with the board or committee member raising the concern and provide feedback to the board member or committee.

### IV. **Effective Communication**

- a. Board members are provided with a list of all senior staff within the State Bar and the functions for which they are responsible in their

Board Orientation materials. Additionally, Board members are provided with a document entitled “State Bar Overview” that contains a summary description of each State Bar program and the key staff.

- b. If the above-identified resources do not answer the contact questions, Board members should contact the Executive Director directly and ask for her help in locating the information source needed.

V. ***Board Orientation***

- a. The Board of Governors is responsible for Board orientation with the support of the Executive Director.
- b. A “Board Book,” a compilation of Board Governance Policy has been prepared by staff and will be submitted to the Board at its July 2004 meeting.
- c. A more complete orientation binder is given to new board members, offering additional materials on this subject, including more specific procedural information about lines of authority to augment the Board Governance Model. In addition, an orientation meeting shall be held at the annual meeting of the Bar. Participation in this meeting is mandatory. If a board member misses this orientation, the member will make a significant effort to set up a substitute meeting with those who are part of the orientation process.

**(Source: Board of Governors’ Resolutions, July 2004, July 11, 2008.)**