

# AGENDA ITEM

**JULY 132**

Proposal to Establish a California  
Professional Responsibility Award

**DATE:** July 2, 2010

**TO:** Members of the Board of Governors  
Members of the Board Committee on Regulation and Admissions

**FROM:** Randall Difuntorum, Director, Professional Competence

**RE:** Proposal to Establish a California Professional Responsibility Award

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## **EXECUTIVE SUMMARY**

This agenda item proposes that the Board of Governors establish a special award recognizing a member's outstanding contribution to the advancement of attorney professional responsibility standards in California. The process for the award would be similar to the processes used for other State Bar awards such as the Bernard E. Witkin Medal, but it would not be awarded automatically on an annual basis. Instead, it would be awarded only when warranted under stated guidelines.

Should the Board agree with the establishment of this new award, a recommendation for the inaugural 2010 recipient will be considered in closed session by the Board Committee on Member Involvement Relations and Services ("MIRS"). The MIRS closed session consideration also will address a recommendation that the new award be named after the inaugural recipient and that the award be presented at the 2010 State Bar Annual Meeting.

Board members with questions about this matter may contact Randall Difuntorum at (415) 538-2161.

## ***DISCUSSION***

One of the important traditions of the Board of Governors ("Board") is to promote excellence among the members of the State Bar by conferring awards that recognize exceptional contributions and achievements in the legal profession. Among the awards that are conferred by the Board are the following: the Bernard

E. Witkin Medal;<sup>1</sup> the Jack Berman Award of Achievement;<sup>2</sup> the Loren Miller Legal Services Award;<sup>3</sup> the President's Pro Bono Services Awards;<sup>4</sup> and the Annual Diversity Awards.<sup>5</sup> At present, there is no award recognizing a member's outstanding contribution to the advancement of attorney professional responsibility standards in California. At the national level, outstanding professional responsibility contributions are recognized by the American Bar Association (ABA) through its annual Michael Franck Professional Responsibility Award.<sup>6</sup> This agenda item proposes that the Board establish a special award recognizing a member's outstanding contribution to the advancement of attorney professional responsibility standards in California. Such an award would further the State Bar's Strategic Plan, which includes as a State Bar key function, setting and maintaining high professional standards for California lawyers.<sup>7</sup> A recommendation for the award guidelines is set forth below. A recommendation for the initial recipient of the award will be considered in closed session by MIRS.

Recommended Guidelines for the Award:

Although some State Bar awards are given on an annual basis, it is recommended that this award be conferred once every three years and only if warranted based upon the recommendation of a designated selection committee. In part, this is because the recommended function of this award is to recognize a member's long-term commitment to advancing the field of professional responsibility rather than a discrete achievement in a particular year.

The selection committee would be comprised of the following persons: the Chair or Co-Chairs of the Board's Committee on Regulation and Admissions (or its successor Board committee); the Chair of the Standing Committee on Professional Responsibility and Conduct ("COPRAC"); the State Bar's Chief Trial Counsel; and the State Bar's Director of Professional Competence. It is believed that the persons

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<sup>1</sup> The Witkin Medal Award recognizes legal giants who have altered the landscape of California jurisprudence. It is conferred on people who, through a career of extraordinary service, have made significant contributions to the quality of justice and legal scholarship in California.

<sup>2</sup> The Jack Berman Award was established in 1992 as the Award of Achievement for Distinguished Service to the Profession and the Public, and was renamed in honor of Jack Berman in 1994 by the California Young Lawyers Association. The award honors distinguished service to the profession and the public by a young lawyer or a lawyer who is in their first five years of practice.

<sup>3</sup> The Loren Miller Award was created in 1977 to Commemorate the 50<sup>th</sup> anniversary of the State Bar of California and is awarded annually to honor an attorney who has demonstrated a long-term commitment to the legal welfare of the disadvantaged by personally working to extend legal services to the indigent.

<sup>4</sup> The President's Pro Bono Service Awards were created in 1983 to recognize outstanding commitment to pro bono legal services. Attorneys within a variety of practice settings are recognized for extraordinary pro bono service to low income persons in need.

<sup>5</sup> The Annual Diversity Awards recognize outstanding efforts made by a bar association, law firm and an individual attorney in promoting diversity in the legal profession; in particular, to commend efforts ensuring the full and equal opportunity of all persons for entry and advancement in California's legal profession.

<sup>6</sup> The ABA's Michael Franck Professional Responsibility Award brings deserved attention to individuals whose career commitments in areas such as legal ethics, disciplinary enforcement and lawyer professionalism demonstrate the best accomplishments of lawyers.

<sup>7</sup> Goal #1 of the State Bar Strategic Plan (adopted July 11, 2008) provides: "PUBLIC PROTECTION - The public is protected and served by attorneys and other legal service providers that meet the highest standards of competency and ethics."

occupying these roles, in any given year, would possess the requisite familiarity with professional responsibility in California to enable them to identify qualified individuals themselves and screen recommendations submitted by members or other individuals or groups, and to make a recommended selection to the Board.<sup>8</sup> The selection would then be “vetted” through MIRS or a successor appointments Board committee with the Board as a whole ultimately ratifying the selection. Nominations would be welcome, but it would be incumbent upon the selection committee to recommend a selection with or without nominations.

The eligibility criteria for receiving the award would be the following: membership in the State Bar of California (active or inactive; however, deceased members also would be eligible); no record of discipline by the State Bar of California or any other lawyer disciplinary agency; and not presently employed by the State Bar of California or presently serving as a member of the Board of Governors or COPRAC.

The profile of a typical recipient would include a combination of some, but not necessarily all, of the following career achievements:

1. At least 15 years in the practice of law in California;
2. Service as a member of COPRAC, the Rules Revision Commission, or another State Bar or Supreme Court committee charged with studying a professional responsibility issue;
3. Service as a member of the Board of Governors;
4. Service as a member of a county bar or specialty bar association ethics committee, including specialty groups such as the National Organization of Bar Counsel (NOBC) or Association of Professional Responsibility Lawyers (APRL);
5. Experience teaching professional responsibility to law students, including as an adjunct;
6. Extensive writing and continuing education (MCLE) presentations on professional responsibility;
7. Service in the State Bar discipline system as a trial counsel, a respondent’s counsel or a State Bar Court Judge, or in the State Bar Professional Competence Office;
8. Service as a fee arbitrator;
9. Service as an expert witness on matters of professional responsibility;
10. Litigation experience in attorney professional liability or related subjects;
11. Experience giving risk management advice to lawyers, including activity as a member of law firm management or on behalf of legal malpractice insurance carriers;
12. Service as a member of the ABA House of Delegates on behalf of a group in the California caucus (i.e., a State Bar delegate or Los Angeles County Bar Association delegate);
13. Charitable financial contributions directed toward the support of professional responsibility programs or activities (i.e., sponsorship of educational events; or State Bar Foundation contributions); and
14. Noteworthy activity as a legislative or judicial proponent of advancing professional standards and the law governing lawyers in California (including, revision, interpretation, enactment or repeal of governing standards).

The above list is not intended to be exhaustive. In addition, achievement of all of the foregoing is not intended to be either necessary or sufficient for conferring the award. As previously mentioned, the

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<sup>8</sup> In each award year, the selection committee should make a special effort to publicize the nomination process to local and specialty bar associations and to encourage local bar ethics committees to submit recommendations to the selection committee.

objective of the award is to recognize a substantial long-term commitment to advancing the field of professional responsibility rather than a discrete achievement.

Recommended First Recipient of the Award:

Should the Board agree with the establishment of this new award, a recommendation for the inaugural 2010 recipient will be considered in closed session by MIRS. The closed session consideration by MIRS also will address a recommendation that the new award be named after the inaugural recipient and that the award be presented at the 2010 State Bar Annual Meeting.

***EFFECTIVE DATE OF PROPOSAL***

The recommendation is that establishment of the award take effect immediately.

***FISCAL AND PERSONNEL IMPACT***

It is recommended that staff support for the award nominations committee and other related activities including publicity, solicitation and processing of member/public recommendations for award recipients, and the cost of the award itself, be housed within the Office of Professional Competence. The cost associated with the first award is anticipated to be absorbed by the presently budgeted funds of the Office of Professional Competence. A minor budget increase may be needed for the future years. No staffing enhancement is anticipated.

***IMPACT ON THE BOARD BOOK/ADMINISTRATIVE MANUAL***

Establishment of the recommended new award will not have an impact on the Board Book.

***RULE AMENDMENTS***

The action requested in this agenda item would not result in amendments to any State Bar rules.

***PROPOSED BOARD COMMITTEE RESOLUTION***

If the Board Committee on Regulation and Admissions agrees with the above recommendation for the establishment of a new award, the following resolution is recommended:

**RESOLVED**, that the Board Committee on Regulation and Admissions recommends that the Board of Governors of the State Bar of California establish a new California professional responsibility award to recognize a lawyer's outstanding contribution to the advancement of attorney professional responsibility standards in California.

***PROPOSED BOARD RESOLUTION***

Should the Board of Governors agree with the recommendation of the Board Committee on Regulation and Admissions, the following resolution would be in order:

**RESOLVED**, that upon the recommendation of the Board Committee Regulation and Admissions, that the Board of Governors of the State Bar of California establish a new California professional responsibility award to recognize a lawyer's outstanding contribution to the advancement of attorney professional responsibility standards in California.