THE STATE BAR OF CALIFORNIA

OFFICE OF EXECUTIVE DIRECTOR
Elizabeth Parker, Executive Director/CEO

180 HOWARD STREET, SAN FRANCISCO, CA 94105
Tel: 415-538-2275
E-mail: Elizabeth.Parker@calbar.ca.gov

June 27, 2017
Via Encrypted Secured Email

The Honorable Elaine M. Howle
State Auditor
Bureau of State Audits
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Re: State Bar of California Response to State Audit Report 2017-030

Dear Ms. Howle:

Please find below the response of the State Bar of California to the Audit 2017-030. Before turning to our specific observations, we wish first to thank your audit team for its courtesy and professionalism. The State Bar is committed to transforming itself into a well-managed and transparent organization that effectively carries out its public protection mission.

Next we wish to thank you for the report and its recommendations, the majority of which we intend to promptly implement. This audit report, like others in the last two years, is of great help to new State Bar leadership as it works to implement comprehensive reform throughout the agency. The 2017 report and its recommendations will be a welcome addition to this on-going work.

Specifically the 2017 Report makes helpful suggestions on ways to further enhance efforts underway to implement classification and compensation analyses, reduce spending on outside counsel, codify earlier management identified alcohol and catering spending, develop additional controls of purchasing cards, and create additional attorney discipline system funding and metrics.

The report's suggestions for how the State Bar might better codify or advance the serious work underway in each of these areas is thus an important contribution to our on-going reform efforts. As a result, we believe that the final report provides both a useful overview of the Bar's progress in the areas studied, as well as thoughtful recommendations for improvement from which we can benefit, going forward.

The findings document the important and continuing progress of reform which new State Bar leadership has made in slightly less than two years As this process of reform continues, we fully expect that additional issues requiring correction will come to light. We assure you that we are committed to identifying and addressing such issues as part of our on-going internal review of all State Bar functions.

Our specific responses to report recommendations are provided below. In some areas, additional contextual information is provided to clarify facts which may not have been clearly set forth in the report. The State Bar's past failings are well known, but we believe it is also important to clarify the process for identifying problems and the State Bar's actions in response.

The State Bar itself is acting to bring about needed reform; audit reports are helpful but they cannot substitute for such agency leadership. To be successful, the public and our stakeholders need to be able to rely on the State Bar's commitment to excellence, accountability and transparency in achieving its public protection mission. Critical to this goal is the State Bar's own commitment to identifying problems and correcting them in collaboration with you and our oversight authorities. Our factual clarifications are intended to make clear this approach.

RESPONSE TO SPECIFIC AUDIT FINDINGS

To better align its compensation practices with those of comparable agencies, the State Bar should update and formalize its salaries and benefit policies by doing the following:

1. Continue negotiations with the union to transition represented employees to an eight-hour workday and a 40-hour workweek, and to implement new salary and job classifications.

   The State Bar appreciates the fact that the report recognizes the Bar's significant progress in attempting to align employee work hours and compensation with comparable agencies and agrees with the recommendation accordingly.

2. Implement an eight-hour work day and 40-hour workweek, as well as new salary and job classifications for its non-represented employees by July 2017.

   The State Bar appreciates the fact that the report recognizes the agency's significant progress in attempting to align employee work hours and compensation with comparable agencies and agrees with the recommendation accordingly.

3. Require a contribution rate to health care costs for non-represented employees that is equal to the contribution rate of represented employees by January 2018.

   The State Bar appreciates the fact that the report recognizes the agency's significant progress in addressing disparities between represented and non-represented staff with respect to health care contributions, and agrees with the recommendation accordingly.

   It should be noted that the recommendation reflects the State Bar's intention. However, contribution rates for represented employees are currently the subject of collective bargaining. If agreement is not reached in time for the 2017 Open Enrollment period, non-represented employee contributions, effective January 1, 2018, will be set at the current contribution level for represented employees. If, subsequent to the Open

Enrollment period, an agreement is reached with the union reflecting a different contribution structure, the State Bar would not likely be able to modify required contribution levels further until January 1, 2019.

4. For executive employees, require by January 2018 contributions to post-retirement health care costs at a rate equivalent to their contributions during employment at the State Bar.

   The State Bar appreciates the fact that the report recognizes the State Bar's significant progress in addressing its post-retirement health plan, and agrees that, executive employees, hired on or after January 1, 2018, will be required to contribute to post-retirement health care costs at a rate equivalent to their contributions during employment at the State Bar. Imposing this change on current management staff can be expected to persuade many key managers to retire early, destabilizing the Bar at a time of significant reform of its internal management. Moreover, the expected retirements of these managers over the next few years will accomplish the objective of this recommendation over a somewhat longer timeframe without disrupting the Bar's services.

5. Develop and adopt a formal policy by December 2017 to regularly compare staff compensation and benefits with comparable agencies.

   The State Bar agrees.

To ensure that purchasing cards are assigned only to appropriate staff, to ensure that State Bar's records of employees' credit limits reflect those established with the bank, and to verify that staff use purchasing cards only for allowable and necessary expenses, the State Bar should do the following immediately:

The State Bar appreciates the fact that the report outlines a number of steps taken by the Bar to enhance internal controls and oversight of the purchasing card program. A brief overview of the State Bar's pcard program is provided as context for our response:

- *The State Bar's bank provides a secure online system to manage all banking functions, including checks, wire transfers and credit cards. Purchasing cards are managed via the credit card module of this secure online system.*

- *Approving managers have access to the accounts of cardholders they approve, and can review purchasing activity at any time.*

- *Only key employees within General Services have program administrator rights to the credit card module, with one serving as primary administrator for day to day management. Only these key employees can order a new card; cancel or suspend a card; change a credit limit; change an approver; make any other change to a cardholder profile; and see all cardholder activity.*

- *New cardholders are enrolled in the system only upon receipt of an enrollment form, signed by the prospective cardholder's department head, which includes either a credit limit based on our standardized limits, or a custom limit based on operational need as documented on the enrollment form.*

- *Subsequent changes to credit limits are submitted via email to General Services. Credit limit changes require approval from cardholder's department head. The bank enforces credit limits and that is the ultimate internal control.*

- *In addition to credit limits, Merchant Category Code restrictions are also in place, which restrict purchases for certain categories of services or certain specific vendors. For example, most foreign airlines are completely restricted; Air Conditioning, Heating and Plumbing Contractors are restricted to "Building"-related cardholders.*

- *The bank provides robust fraud monitoring. Suspicious activity is reported immediately and simultaneously to cardholders and program administrators; accounts are frozen if any fraudulent activity is confirmed.*

- *At the end of each billing cycle cardholders review their transactions online; provide descriptions and account coding information for each; and forward packets of hard copy receipts to their approver.*

- *Approvers review the hard copy receipts and the online statements, and approve the online statements.*

- *Receipt packets are sent to General Services. Statements and receipts are audited per established procedures.*

In our view the technical safeguards and multiple levels of review and approval noted above provide a significant level of internal control and oversight of the purchasing card program.

6. Develop a policy that requires the justification of the business needs for employees to receive purchasing cards and use this policy to limit the number of staff issued a purchasing card.

   The established parameters for purchasing card use have historically provided a sufficient guideline for department heads to determine which of their employees have an operational need for a purchasing card.

   To ensure greater oversight, the State Bar will accept the report recommendation and adopt such a policy by January 2018.

7. Restrict the use of purchasing cards to its original purpose, which was for lower dollar and frequently occurring purchases. For purchases above $5,000, the State Bar should require the vendor to bill for payment.

   The report highlights purchasing card spending in 2016. We reviewed all 9,284 purchasing transactions in the 12 billing cycles of that year. 85% of purchase transactions were under $500; 14% were between $500 and $4,999; less than 1% – 87 transactions out of 9,284 – were $5,000 or more.

   Of those 87 transactions, 34 were recurring monthly charges for offsite records storage, online legal research and a group parking contract; 21 were for other miscellaneous goods and services, mostly related to facilities and I.T.; 32 were for hotels and related services, primarily for the Annual Meeting and other Sections-related events.

   The State Bar agrees that it would be reasonable to limit purchasing card purchases of $5,000 or more to a more restricted set of expense categories, likely related to facilities and other support operations. These restrictions will be codified in policy by January 1, 2018.

8. To demonstrate its commitment to the board's prohibition of all State Bar spending on alcohol, the State Bar should immediately update its procurement manual to reflect this prohibition.

   The State Bar appreciates the fact that the report recognizes the agency's significant progress in eliminating alcohol expenditures and agrees with the recommendation accordingly.

9. To ensure that its costs are reasonable and appropriate, the State Bar should update its meal and catering policy to reflect the meal policy of the State's executive branch and require individuals attending committee meetings for the State Bar to comply with standard meal per diem rates.

   The State Bar appreciates the fact that the report recognizes the agency's significant progress in reducing on-site catering costs through the imposition of caps in 2017. The State Bar agrees to further advance work in this area through the adoption of Executive Branch per diem limits for onsite catering expenditures.

10. To ensure that the cost for sections events are reasonable and prudent, the State Bar should require that the sections follow the State Bar's meal per diem and lodging rates, and require the sections to limit expenses for events to only those activities that reasonable and necessary. For off-site events, the State Bar should require sections to follow the State Bar's existing policy of providing written justification of a significant business need to hold the event off-site and obtain approval from the executive director or chief operating officer.

Sections' activities are entirely self-funded from voluntary membership fees and the Sections are likely imminently separating from the State Bar. Imposing additional restrictions on Sections' spending would create both an administrative burden and a distraction from the important work being done to transition the Sections to a standalone entity. In the Bar management's judgment, the Bar's limited staff resources are better spent helping the Sections successfully depart the Bar for a private, non-profit than in further refining oversight of expenditures which will soon come to an end.

11. To ensure that its lobbying expenses are reasonable and are only for allowable activities, the State Bar should amend its lobbying contracts to require that the lobbyists provide sufficiently detailed invoices that support the amounts they bill for their services.

    The State Bar has not finalized currently pending lobbying contracts. Audit recommendations will be considered as part of the contract finalization process.

To contract only for appropriate and necessary services from outside law firms at a prudent rate, the State Bar should put the following informal practices into a written policy:

12. An assessment of the need for outside counsel, including whether the State Bar's attorneys can provide the specified legal services.

    The State Bar appreciates the fact that the report recognizes the agency's significant progress in reducing the use of, and costs associated with, outside counsel, and agrees with the recommendation accordingly.

13. An evaluation of the State Bar's past experience with the law firms being considered.

    The State Bar appreciates the fact that the report recognizes the agency's significant progress in reducing the use of, and costs associated with, outside counsel, and agrees with the recommendation accordingly.

14. The process State Bar uses to select the outside law firm, including documentation of proposals from other prospective law firms and the costs it considers reasonable for the legal services.

    The State Bar appreciates the fact that the report recognizes the agency's significant progress in reducing the use of, and costs associated with, outside counsel, and agrees with the recommendation accordingly.

15. To reduce its reliance on outside legal counsel, the State Bar should continue its efforts to hire staff to fill its remaining vacant attorney positions.

The State Bar appreciates the fact that the report recognizes the agency's significant progress in reducing the use of, and costs associated with, outside counsel, and agrees with the recommendation accordingly.

16. To increase transparency, State Bar should disclose annually to the board a list of all contracts with outside law firms – including a description of the services provided, the need for such contracts, and the value and length of the contracts.

    The State Bar appreciates the fact that the report recognizes the agency's significant progress in reducing the use of, and costs associated with, outside counsel, and agrees with the recommendation accordingly.

17. To better measure how well its attorney discipline program is meeting the State Bar's core mission to protect the public from attorney misconduct, the State Bar should by December 2017 identify key goals and metrics for the attorney discipline system.

    The State Bar must comply with complex statutory mandates for the Annual Discipline Report and has existing metrics to aid Supreme Court, legislative, and management oversight of the discipline function. State Bar management staff have been working with its Office of Research and Institutional Accountability and the Board to simplify and update these metrics. We appreciate the Auditor's validation of this on-going effort, and agrees with the recommendation accordingly.

Respectfully,

Elizabeth R. Parker

Elizabeth Parker
Executive Director