



**THE STATE BAR
OF CALIFORNIA**

**INTER-OFFICE
COMMUNICATION**

DATE: December 3, 2004
TO: Sections Task Force
FROM: Robert A. Hawley, Deputy Executive Director
SUBJECT: Authority to Administer State Bar Staff

INTRODUCTION

Over the past few years various Section representatives have expressed a desire for the Sections to assume control or have input for administering personnel assigned to the Sections. The responsibility for hiring, firing, setting and adjusting salaries, and all other aspects of personnel administration currently resides exclusively with the Executive Director through a delegation from the Board of Governors and is administered by the State Bar's Office of Human Resources.

The interest in this area derives primarily from the Sections' concerns arising from the State Bar's assessment of costs to the Sections for "overhead" services, including personnel costs, the State Bar provides to the Sections that operate as an integrated part of the State Bar.

The Sections Task Force has requested the Executive Director's Office to comment on this subject.

DISCUSSION

The State Bar is a public corporation created in the judicial branch of state government. (Cal. Const., art. VI, section 9; Business & Professions Code Section 6001). All property of the State Bar is dedicated to public and governmental purposes in the judicial branch of state government. (Business & Professions Code Section 6008).

The State Bar is ultimately governed by the Board of Governors which is charged with executing the executive functions of the State Bar. All powers granted to the State Bar are exercised by action of the Board of Governors. (Business & Professions Code Sections 6008.4, 6010, 6030.) The State Bar, through its Board of Governors, is authorized to do all acts “necessary or expedient for the administration of its affairs and the attainment of its purposes.” (Business and Professions Code Section 6001 (g); see also, *Keller vs. The State Bar of California* (1989) 47 Cal. 3rd 1152, 1163, reversed on other grounds, *Keller vs. The State Bar of California* (1990) 496 U.S. 1, 110 S.Ct. 2228.)

The State Bar, as a public corporation, was created to perform a public governmental function. (*Keller vs. The State Bar of California, supra*, 47 Cal. 3rd at 1162-63.) Within this charge, the State Bar is also empowered to “aid in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice.” (Business and Professions Code Section 6031(a)). Under this authority, the State Bar has created, through its Board of Governors, various sub-entity committees, boards, and commissions for various purposes. Significant among these are the sixteen subject-matter Sections that exist by act of the Board of Governors. (See, Board Policy Book Tab 20, Articles 1-3). These State Bar sub-entities have no legal existence independent of the State Bar and are subject to the absolute and ultimate control of the Board of Governors. (See, Board Policy Book Tab 22, Article 1).

Exercising its executive authority, the Board of Governors has deemed it appropriate to delegate to the Executive Director exclusive authority to administer State Bar staff. The Board Policy Book at Tab 17, Article 4, Section 1 states:

“Personnel administration shall reside exclusively in the Executive Director. The Executive Director shall be advised and assisted by the Office of Human Resources in the administration of personnel.”

As the Board has found it appropriate to delegate to the Executive Director exclusive responsibility for administering staff, the Board itself lacks authority to involve itself in these issues short of revoking the delegation to the Executive Director. It would be inappropriate for the Sections to assume authority or have input that the Board itself has seen appropriate to delegate away from itself.

The rationale for delegating personnel administration to the Executive Director is well

founded. The State Bar's employees are governed by a wide variety of legal and policy standards. Attorney staff are governed by a union-negotiated Memoranda of Understanding (MOU). Non-attorney staff are governed by a separate union-negotiated MOU. Executive Staff are governed by the Rules and Regulations Pertaining to the Employment of Executive Staff. Confidential Employees are governed by the Rules and Regulations Pertaining to the Employment of Confidential Employees. These standards are in addition to countless standards that apply to employees under state and federal law.

Personnel administration is an area fraught with an extraordinary potential for liability under the best of circumstances. By delegating the administration of personnel to staff experts, the Board protects itself and the various sub-entity volunteers from the inevitable and substantial liabilities that arise from the administration of personnel.

Members of the Section Executive Committees are volunteers. It is inappropriate for volunteers to expect to assume control or have input over the administration of personnel.

CONCLUSION

The Office of the Executive Director advises the Sections Task Force, as it advises the Board of Governors, that the delegation to the Executive Director of exclusive authority over the administration of personnel including its many ramifications is a prudent delegation. The Executive Director's Office intends to act in accordance with the exclusive nature of the Board's delegation in this area.