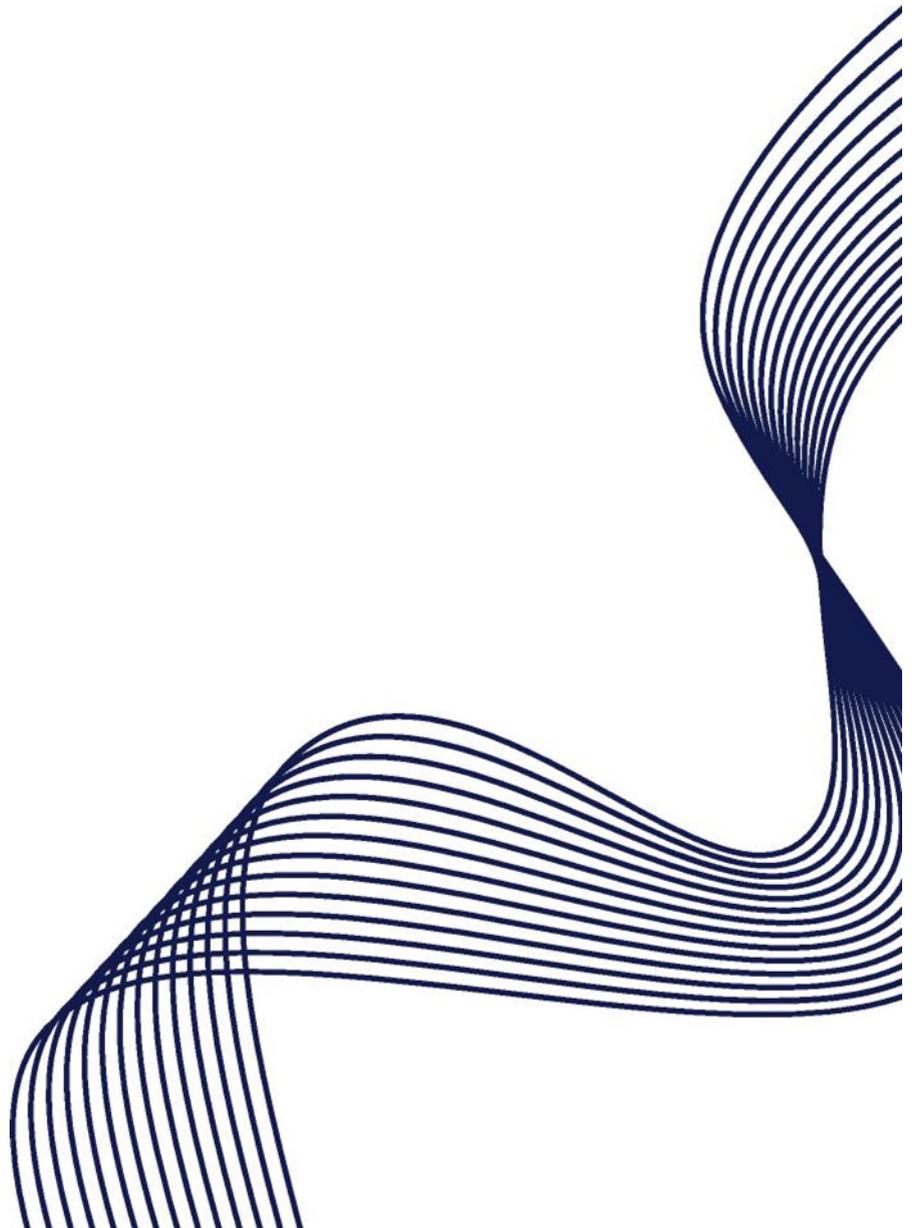




GOVERNANCE AND INTERNAL



OPERATIONS TASK FORCE

2021-22 Report

Background and Process

In December 2020, the ASB contracted with Pathfinder Executive Consulting (Pathfinder) to conduct an assessment of the ASB's governance and internal operations and to provide recommendations based on best practices to then Bar President, Bob Methvin, by June 2020. Due to a transition in executive leadership, progress was delayed, and the contract was extended by addendum to December 2021.

To complement the work by Pathfinder, President Methvin appointed a twenty-four-member task force in early February 2021 to work with the consultant in conducting the assessment and making final recommendations. The task force appointment order is at Appendix 1.

The Task Force was further divided into two sub-committees (Governance and Operations) in March 2021. In August 2021, Bar President Tazewell Shepard added three new members to the task force and issued a new order of appointment (Appendix 2), bringing the total number of task force members to twenty-seven.

Concurrent with standing up the task force, the consultant engaged in a comprehensive review of governance and operations documents and designed a tool to capture, for each area: ASB's current status, best practice(s), and recommendations. The consultant also conducted extensive interviews with key staff to fill in the gaps from the document review as well as provide additional information and perspectives about the ASB. The tool (ASB TF Worksheet) is at Appendix 3.

The Task Force sub-committees began to organize in July 2021. The sub-committees divided into teams, each with assigned areas to review, assess and make recommendations. These reviews included consideration of input from Pathfinder, discussions with Executive Director Terri Lovell and key staff, as well as outside research from a variety of sectors (private, government and non-profit). These reviews were also informed by the collective professional experience of task force members and by their experience as board members of the ASB.

It is important to note that since beginning this effort, the ASB has undergone three important leadership transitions. Each transition naturally required time for orientation and adjustment. The first transition was from an organization with no executive director to the appointment of Ellen Brooks as interim director. The second transition transferred executive leadership from Ellen to the now permanent executive director, Terri Lovell. The third transition occurred with Bob Methvin handing the president's gavel to Tazewell Shepard. To be clear there has been a unity of effort and enthusiastic support for this effort. It is a credit to past and current leaders that they have managed these transitions seamlessly. It is also important to note that many of the issues identified by Pathfinder and Task Force members have either been addressed or are in the process of improvement.



Executive Summary

The following report addresses the areas considered by the task force and its recommendations.

a.) Structure

1.) Governance: The seventy-five-member Board of Bar Commissioners (BBC) is a creature of statute. While the size of the governing board can present some unique challenges the Bar statutes do allow for broad delegation of authority to the Executive Council (EC). The BBC has created 37 Committees and Task Forces and 31 sections under its authority to do much of the work of the ASB. For many of these 68 entities few guidelines have been created to ensure relevance, compliance with ASB policies or alignment with strategic objectives. The BBC should better define the respective roles, responsibilities and authorities between the BBC and EC that would provide the ASB with a structure better able to effectuate its mission in our increasingly fast-paced and unpredictable world. Preliminary guidelines have been published for committees and task forces and the same should be done for sections. Many of the structural issues identified by the Task Force could and should be addressed through the creation of bylaws for the ASB. Those issues are addressed in greater detail in Section 3 below.

2.) Operations. Similarly, the roles, responsibilities and authorities with respect to the Executive Director and General Counsel, and between those executives and the governing body, are areas that would benefit from clarification. Some of the lack of clarity may be a result of the ASB operating without an executive director for a period of time. As one might expect, board leaders often fill the vacuum and by necessity have to handle operational matters. Now that a highly respected and talented leader has taken the helm as Executive Director there is a real opportunity to hand the operational reins back to the chief executive. It is also worth noting the considerable reduction in staff over the years. At the same time, membership has increased and arguably bar business has grown more complex. This presents an opportunity to assess the work and the necessary human resources (structure) to do that work with excellence.

Continuing the work begun by Interim Executive Director Ellen Brooks, Executive Director Terri Lovell has been conducting an assessment of operational requirements across the full spectrum of ASB responsibilities. That assessment has already resulted in the recruitment for new staff positions. Additional positions may be needed to ensure that the ASB can perform its core functions with excellence. An area requiring special attention is human resources (HR) management. The ASB currently does not have an HR professional on staff or on contract to support the organization; HR policies and procedures are currently handled by the ASB Personnel Committee.

Although the Committee provides an important oversight role with respect to HR policies, it should not preempt the Executive Director's responsibility for the day-to-day management of HR practices and procedures.

Current staffing may no longer be sufficient to meet current demands. After supporting past Executive Director recommendations to reduce staff, the BBC should be open to support increases necessary to meet new demands. Consideration should be given to adding an HR professional to staff, or contracting for HR support. The incorporation of an HR professional as part of ASB's operational structure will aid in addressing many of the HR issues identified by the Task Force. Those issues and the Task Force's specific recommendations are provided in greater detail in Section 4 below.

b.) Critical Tasks

1) Governance: The Task Force began its assessment of the critical tasks necessary to meet its obligations by asking the question: "Why does the ASB exist?" As a creature of Alabama statute, the mission of the Bar is clearly defined. A common challenge for unified (mandatory) bars is to balance the primary mission of regulating the profession and responding to the wants and needs of its members. The ASB is no different in this regard.

The opportunity for the BBC in this regard is to establish policies and procedures to review ASB programs, services and activities to ensure that the Bar's core functions (critical tasks) are being executed with excellence. And those things that are less germane to its core mission should perhaps be reduced or eliminated. This is an especially timely opportunity given the ongoing challenges in other states to unified bar membership. Those challenges often revolve around claims that members ought not to pay for those things that are not directly related to regulation and discipline. In coordination with the Executive Director and staff, the BBC should establish a program review policy to evaluate ASB programs, services and activities (PSAs) on a regular basis to ensure alignment with the ASB's core functions along with other factors such as relevance and sustainability. The BBC should consider assigning this responsibility to a standing Strategic Planning Committee. Further detail regarding the creation of this Committee is outlined below in sections 3g and 4f.

2.) Operations: To deliver the programs, services and activities that are part and parcel of the ASB's mission, the professional staff must operate in a way that is compliant with relevant law and policy and consistent with industry standards. The primary responsibility for this lies with the Executive Director, who must: 1-assess the critical tasks necessary to meet the organizational demands in a myriad of areas (e.g., Finance, HR, Information Technology, Continuity of Operations); 2- recruit and retain competent staff to accomplish those tasks; and 3-develop the collective and individual skills necessary to meet the inevitable changes in the nature of those critical tasks as new opportunities and challenges arise. Executive Director Terri Lovell is deep in the process of assessing critical tasks and is developing improvement plans in virtually every area.



The Executive Director should be given broad authority and discretion in this area, and should continue to report progress to the Executive Council. A full report of the progress made in each of the areas outlined in Section 4 below, should be made by the Executive Director to the BBC at its annual meeting in June 2022.

c. Competency

1.) Governance: Board diversity and competency are essential to the health of the ASB. Our governance structure is more of a legislative model—most members elected by constituents. The opportunity here is to find ways to recruit diverse board members with specific competencies that will enhance the board's fiduciary posture as well as inform the kind of generative thinking essential to the organization's success in the future. The Board also has a responsibility to ensure the competency of the ASB's Executive Director and General Counsel. No formal performance review or goal-setting process is currently in place to evaluate either of the organization's chief executives.

The BBC should consider creating a board development committee designed to encourage a more diverse and competent board in elected as well as appointed positions. Diversity and competencies should also be factors in the appointment of Executive Council members as well as members of standing committees (e.g., Finance, Audit, Personnel). The BBC should also establish a formal process for setting performance goals with the ED and GC, as well as a process for performance review.

2) Operations: Conducting a stem to stern assessment of staff competencies, particularly with respect to technological proficiencies, may provide a roadmap for recruiting the right team members for the right positions. Aligning those positions more directly to the ASB's strategic plan is also an important exercise. Executive Director Terri Lovell continues her assessment of her staff, to include a revamping of the performance review process. As with other operational matters, the BBC should give the ED wide berth to complete her assessment and to establish a coaching and evaluation program. The Executive Council and Personnel Committee should monitor progress in this area, and the BBC informed as part of the ED's report at the annual meeting in June 2022.

d. Culture.

An organization's culture is the foundation for everything it does, or for that matter, fails to do. Great policies, procedures and practices are only realized when supported by the right organizational culture. Interviews and conversations with ASB leaders on this topic have focused on trust, and the need to strengthen the bonds of trust between the board and staff, and the ASB and its other critical relationships (Supreme Court, Affiliates, Law Schools, etc.) Transparency has also been a topic of discussion. The ASB has a set of stated values: Trust, Integrity and Service. Perhaps the opportunity here is not to change these values, but to establish practices that routinely reinforce and celebrate those values.

Governance

The following is a more detailed discussion of the Task Force's findings and recommendations in the areas of relating to governance of the ASB.

a.) Organizing Documents

1.) Statutory: Much of the ASB's current structure and many of its governance authorities and responsibilities are prescribed by state statute. Those provisions are contained in Chapter 3, Title 34, of the Alabama Code.

Section 34-3-40(a) states that the governing body of the Alabama State Bar shall be the Board of Bar Commissioners (BBC). The President of the Alabama State Bar serves as President of the BBC. The powers of the BBC are set out in Section 34-3-43 in the Code and Section 34-3-43 permits the BBC to delegate such power as it deems appropriate to an Executive Council (EC).

The Task Force has been careful to ensure that its recommendations are consistent with applicable statutes, or where appropriate the Task Force has recommended that the ASB support a statutory change.

2.) Regulatory: Pursuant to Article VI of the Alabama Constitution and Title 34 of the Alabama Code, the Alabama Supreme Court exercises significant regulatory authority over the ASB. The Alabama Supreme Court exercises such authority through Court Rules in a broad number of areas including: mandatory continuing education, Bar admission, specialization, client security fund, legal internships, rules of professional conduct, and lawyer discipline.

3.) Bylaws: Section 34-3-43 of the Alabama Code assumes that the Board of Bar Commissioners will make rules and bylaws to govern the ASB. To date bylaws have not been developed or approved by the Board.

We recommend that the BBC develop and publish bylaws. We recommend that a small (3-5 members) and singularly focused work group be assembled to draft and submit bylaws for the BBC's consideration. We believe bylaws will promote greater understanding, trust of process and governance, clarity regarding role of BBC, officers, EC, and delegation of responsibilities to each level of governance. Bylaws from other integrated state bars should be reviewed to inform this effort.

b. Mission

The state bar protects the public by ensuring that lawyers who are granted licenses are not only minimally competent to practice law but also abide by the profession's ethical standards. Second, the state bar is a member organization with responsibilities largely of a service nature including education, publications and improvement of the administration of justice. These activities benefit the legal profession as well as the general public.



1) Keller policy: As an integrated bar, the activities which the ASB can undertake in the political sphere are limited by the United States Supreme Court's decision in *Keller v. State Bar of California*, 496 U.S.1, 110 S.Ct. 228, 110 L.Ed. 21 (1990). In order for a bar activity to be constitutionally permissible, it must be: (1) nonideological and (2) germane to the regulation of the legal profession or improvement of the quality of available legal services. Litigation continues in other integrated bar states, most often brought by bar members challenging activities they believe go beyond the boundaries established by Keller.

We recommend that the obligations and restrictions imposed by Keller be included in the ASB bylaws and made a part of new board member orientation, and that all ASB activities be measured against Keller standards to ensure compliance. We should also require regular training and education of sections and committees regarding the Keller doctrine.

2) Anti-Trust policy (NC Dental): In *NC Dental Board v. Federal Trade Commission*, 574 U.S. 494 (2015), the U.S. Supreme Court held that North Carolina's Dental Board was not immune from federal antitrust liability because a controlling number of its decision-makers were active market participants in the same occupation the board regulates. Although the principles in this case have not been applied to integrated bar organizations, it provides some reason for caution with respect to actions the ASB takes or may take in the future to limit competition in the provision of legal services. Likewise with the respect to the regulation and provision of continuing legal education by the ASB in competition with other CLE providers, the principles contained in the NC Dental case should be considered to ensure that the ASB does not engage in anticompetitive activity that could subject it to similar litigation.

We recommend that ASB activities be reviewed by legal counsel to reduce the risk of exposure to anti-trust complaints, recognizing that certain statutory functions relating to the regulation of the practice of law will naturally and legitimately limit those authorized by Alabama State law to practice law.

c. Structure

The structure of the ASB is dictated almost entirely by state statute. After considering the pros and cons of proposing legislative changes, we determined that many of the best practices relating to governance could be accomplished within the existing statutory structure.

1) Public/Private Status: Traditionally there has been a tension between classifying the ASB as a public/state or private entity. In its 1965 decision *Ex Parte Griffith*, 178 So. 2d 169 (1965), the Alabama Supreme Court stated, "Members of the bar of Alabama are members of a private incorporated association." Yet our review of the Alabama Code provisions and Alabama Supreme Court Rules indicate that nearly every aspect of the ASB, particularly with regard to its fiscal management and regulatory functions are much more consistent with a public/state entity.

In fact, the State Bar is listed as a state agency on the Alabama Department of Archives and History website, and is required along with other state agencies to publish an annual report. And recent decisions of the Alabama Supreme Court and the Eleventh Circuit Court of Appeals have consistently referred to the ASB as an “arm of the State of Alabama.” Because the modern trend is to classify the ASB as a public agency, we recommend that ASB leadership take all steps necessary to operate as a state agency.

Because the status of the ASB affects a myriad of important matters (e.g., liability/immunity, fiscal management, labor regulation), we recommend that ASB leadership make any necessary changes consistent with its status as a public agency.

2.) Governing Board: By statute, the ASB’s Board of Bar Commissioners is composed of 75 members. It is structured much like a legislative body, with the vast majority of its members elected by licensed attorneys from judicial districts. Only 9 of the 75 members are appointed by the Board itself, the remaining 66 are elected. Although experts on nonprofit governance vary as to the optimum number for effective board governance, it is clear that a 75-member board is too large to effectively and efficiently handle many of the critical tasks required of a governing body. While we acknowledge that the ASB has managed to operate over the years despite its large board, the large size of the board can contribute to a lack of engagement and oversight on the part of its board members.

We recommend the Board of Bar Commissioners delegate specific and sufficient authority to the Executive Council to allow for the “nimble” governance of the ASB between BBC meetings. Such delegation should make clear those decisions that are beyond the EC’s authority. This delegation and retention of authority should be documented in the bylaws. The ASB would benefit from more analysis regarding the extent of the changes necessary to implement this recommendation.

3.) Executive Council: Like the ASB Board of Bar Commissioners, the Executive Council structure is directed by statute. Voting members include the president, president-elect, immediate past president, vice-president, and three commissioners. Non-voting members include the secretary (Executive Director) and ex-officio members. By statute, the BBC may delegate authority to the EC. Such authority is not limited or specified. Although the EC has been delegated authority in the past by the BBC, there are few documented policies or delegations of authority to the EC. Similarly, the delegation of authority from the BBC and/or the EC to the Executive Director lacks clarity. The three voting members of the EC are by statute elected by the BBC. There currently are no policies in place regarding how that process should be conducted to ensure fair and impartial consideration of all Commissioners as well as factors (e.g. diversity, areas of expertise) that should be used to guide the BBC’s decision.

Complementing our recommendation above, we believe the BBC should adopt and document clear lines of authority for all three levels of ASB Leadership: BBC, EC and ED. With regard to election of the three non-officer voting members of the EC, we recommend that the Nominating Committee, in addition to taking into consideration the President-Elect’s recommendations for appointment, give full consideration to the ASB’s commitment to promoting diversity and professional expertise. Minutes for EC meetings should be captured and shared with the BBC. Such minutes should be kept as part of the ASB’s official records.



4.) Officers: The officers of the ASB are created by statute and include: President, President-elect, Vice President and Secretary/Executive Director. Although the roles and responsibilities for each of these positions are generally outlined in the statute, the ASB has not adopted “job descriptions” for each, a best practice for non-profit boards. There are no statutory qualifications for President-Elect, other than that he/she be a member in good-standing of the ASB at the time of election. By statute the PE automatically ascends to ASB President at the annual meeting. The lack of qualifications as well as election from the general membership provide the potential for the election of a member with less-than-ideal qualities (e.g., lack of professional experience, serious discipline history) and/or someone with no past Bar service or knowledge of the growing complexities of governing the ASB.

We recommend that the BBC adopt job descriptions for each of the officer positions; and job descriptions should be included in ASB bylaws. In a departure from our view that the ASB should avoid any legislative efforts to alter the Alabama laws governing the ASB, we recommend consideration be given to promoting an amendment to the current statute that would require that candidates for President-Elect meet a number of qualifications to include but not limited to: at least 10 years as a licensed attorney in Alabama; no formal discipline history; and current or past membership on the BBC.

5.) Elections: The ASB conducted an extensive review of its elections process in 2021 and published revised election rules for President Elect and Board of Commissioners. The revision incorporated election requirements in statute and added policies and procedures to improve ASB’s election processes. The revised election rules and statutory language are less clear about the election of the Vice-President. Statute requires that the VP be a current Bar Commissioner and be elected by the BBC at its annual meeting. Current practice has given the President-Elect the discretion to appoint the VP with the consent of the Board of Bar Commissioners. We believe this practice may unnecessarily give the President-Elect more authority than intended by statute, and may in some cases limit the opportunity to expand the consideration for a broader pool of potential bar leaders to serve.

Given the excellent work already done to improve our elections process, we recommend that the revised election procedures be incorporated by reference in the ASB bylaws. We also recommend that the election process for VP be given renewed consideration by the BBC and that it adopt and document a process that may provide broader opportunities for Bar leadership in the future.

6.) Appointments: By statute, the BBC appoints nine at-large members to the Board. The ASB included in its 2021 revision of election rules policies and procedures for recruiting, nominating and appointing at-large members. The revision specifically included diversity considerations as part of the recruitment and selection process.

We believe the 2021 election rules revisions reflect best practices regarding the appointment of BBC at-large members and offer no recommendations for change.

d. Committees/Task Forces: As a best practice, committees and task forces should be extensions of the governing board—doing work often too detailed for the board to consider and/or requiring specific expertise and effort necessary to inform the board’s decisions. The ASB currently has 18 committees and 19 task forces for a total of 37 sub-entities of the ASB. This number does not include the 31 sections of the ASB, which would bring the total of supported entities within the ASB to 68—68 organizations separate from the BBC that require ASB resources to support. Aside from the terms for committee chairs and members (1 yr for Chairs, 3 yrs for members), there are no documented policies regarding committee/task force size or sunset criteria. The BBC receives reports from some committees and task forces, but not from all. By practice, not policy, committees and task forces should submit agendas, meeting minutes and progress reports to the President and ED. Although we did not gather data regarding this practice, we understand from interviews with staff that few committees and task forces comply.

We recommend that the BBC conduct a full review of current committees and task forces to determine which should continue and those that should be sunset. To ensure more efficient and effective use of committees and task forces in the future, the BBC should adopt and document committee and task force guidelines that establish specific policies and procedures that address among other things: appointment, annual reporting, Keller compliance, size, composition, terms, sunset criteria. With regard to standing committees (e.g., Nominating, Finance and Audit, Personnel), we recommend that ASB bylaws include provisions on selection and appointment of committee members. The ASB would also benefit from greater clarity regarding the distinction between commissions and committees. Finally, we recommend any future bylaws task force or committee evaluate the process for BBC appointments to outside state boards.

e. Meetings: The only meeting of the BBC required by statute is the annual meeting. Other meetings of the BBC are generally determined by the President in coordination with the Executive Director. The BBC meeting schedule in recent years has included seven to eight meetings per year. Meeting agendas are developed in advance by the President and Executive Council. Agendas traditionally include reports from staff and information presentations. The President presides over BBC meetings and a modified version of Roberts Rules of Order is used to facilitate meetings. With seventy-five Commissioners, it is difficult to engage in strategic discussion; most votes taken by the BBC involve little discussion. Meetings are subject to state open meetings laws.

We recommend that the protocols and procedures, to the extent practicable, be included in ASB bylaws. The focus of BBC meetings should be on policy and strategic issues. Staff, committee and task force reports should be provided in board meeting materials. As a general proposition, we believe information contained in board materials should not be again presented via meeting presentations. We believe this approach will shorten BBC meetings, make better use of participants’ time and provide more opportunity for Commissioners to be engaged on higher level issues facing the legal profession in Alabama. To aid in redirecting the BBC’s time and energy, consider making an annual or bi-annual update of the ASB’s strategic plan the focus of a BBC meeting.





To aid the President in the conduct of BBC meetings, we recommend formalizing the role of a parliamentarian, and adopting clear meeting procedural rules that aid rather than hinder discussion and decision-making. We recommend that the rules also incorporate procedures for virtual participation and voting by BBC members.

f. Lines of Authority: As previously discussed, the lines of authority between the BBC, EC and ED have lacked some clarity; see recommendations in c.2 and 3 above. By Alabama Supreme Court Rule, the General Counsel is hired by and reports to the BBC, not the ED. This creates a bifurcated chain of command, with two chief executives reporting to the BBC: the GC responsible for ASB discipline and general institutional legal issues; and the ED responsible for managing and leading the ASB. A recent resolution by the BBC designated the ED as the responsible state official for the ASB—this despite her lack of authority for a significant part of the ASB’s mission. In recent practice, the relationship between the GC and ED has been one of cooperation and coordination. This, historically, has not always been the case. Performance objectives and evaluations have in recent years been lacking for both the ED and GC.

In general, we believe the lines of authority are clear in terms of the internal staff, with the exception of how the lines of authority are related, if at all, to standing committees. For example, what authority does the Personnel Committee wield with respect to the Executive Council, Executive Director, and staff? Best practices would suggest that other than recommending high level policy related decisions to the BBC, standing committees should leave day-to-day management processes, procedures and decisions to the Executive Director.

Our preliminary recommendation is that the GC continue to be hired by and report to the BBC. We believe, however, that the relationship would benefit from a review that would include the GC and ED to obtain their feedback to ensure that both executives can continue to work harmoniously while maintaining the independence that the GC should possess.

We recommend that semi-annual meetings with the ED and GC should be conducted to review the job performance of the ED and GC. We believe this review should be conducted by either the Executive Council or the Personnel Committee. The first meeting should likely occur in January and center around goals for the years. The second review should occur late summer/early fall to discuss progress and areas of improvement that can be implemented prior to the January meeting. Prior to the review we recommend that the BBC adopt a process that would permit commissioners to provide input to the performance reviews. Annual performance objectives and annual performance reviews should be documented and maintained in the official personnel files of both executives

We recommend that the authority of standing committees be clarified to direct their efforts more on policy and fiduciary oversight of the ASB; operational authority should be granted to the ED.

g. Strategic Plan

The current ASB strategic plan runs through 2022. ASB leadership has already begun the process to develop a new plan.

In addition to the recommendation in 3e above, we recommend that the Strategic Planning Committee be made a standing committee and given the responsibility to not only develop the ASB strategic plan but also to monitor and report on the progress of the plan after its approval by the BBC. We recommend the committee update the BBC on an annual or bi-annual basis. Consistent with best practices, we also recommend that the plan be used to inform BBC agendas and be the foundation for development of ASB's annual budget. To provide continuity from year-to-year, we also recommend that the President-Elect be designated in ASB bylaws as an ex-officio member of the Strategic Planning Committee.

h. Organization Affiliations

The number of organizations with formal and informal ties to the ASB has grown over the years. First among those organizations is the Alabama State Bar Foundation (ASBF), a public corporation originally created by statute to construct and maintain the ASB building. The ASBF acts much like a holding company, keeping the real and physical assets required to operate the ASB. Its governance mirrors that of the ASB—it is completely controlled by the ASB. One ASB employee, the facilities manager, is funded by the ASBF. In addition to the ASBF, there are two non-profit organizations created and governed by the ASB: AL Lawyers Assistance Foundation and Lawyers Render Service, Inc. Formerly a part of the ASB, the Alabama Law Foundation, though now technically independent, continues to have significant ties to the ASB. For instance, a number of ASB BBC members also serve on the ALF board. And grant applications to the ALF require pre-approval by the ASB BBC. In the case of each one of these affiliate organizations, there is no formal documentation of the relationship between the organization and the ASB. In addition to a lack of clarity regarding the respective roles and responsibilities of the ASB and its affiliates, there are potential issues regarding the liability of BBC members and ASB staff for the actions of affiliate organizations. With respect to liability, although ASB volunteers and staff may be protected from suit by state immunity for the activities of the State Bar, are they similarly protected with respect to non-profit organizations (i.e., non-state actors) that are governed and operated by the ASB?

We recommend that the BBC task the appropriate committee to conduct a review of the relationships between the ASB and other organizations where significant financial, governance, and/or management ties exist. Once identified, the BBC should validate those relationships and document them by agreement (e.g., Memorandum of Understanding). Agreements should be reviewed on an annual basis and modified as necessary to account for changes. In addition to addressing roles and responsibilities, the agreements should address volunteer and staff liability—this may require restructuring governance and staffing and/or acquiring



insurance coverage.

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i. Fiduciary Responsibilities

As a matter of general practice, Commissioner responsibilities are outlined in a presentation by Bar leadership at the annual meeting. This presentation is traditionally given to new Commissioners as part of their orientation. Other than periodic informal reminders, there are no documented policies in place with respect to incumbent Commissioners' duties of care, loyalty and obedience. Likewise, there are no published standards of conduct for members of the BBC.

As recommended above, we believe the BBC should approve and include in ASB bylaws a job description for Commissioners. The job description should include the traditional fiduciary duties of a governing board as well as incorporate the responsibilities assigned the BBC by statute. We also believe that an oath by the Alabama Supreme Court Chief Justice or designee be administered for the entire BBC at its annual meeting to solidify and symbolize the individual and collective responsibilities of the BBC and its members. A code of conduct that includes a conflict-of-interest policy should be adopted by the BBC and Commissioners should be required to sign an annual compliance statement. The policy and compliance statement should be reviewed by ASB's General Counsel to ensure consistency with current law and Court rules.

To engage all Commissioners in meeting ASB's fiduciary responsibilities, we recommend that the President endeavor, wherever possible, to appoint each Commissioner to at least one committee or task force.

We recommend that all BBC members be invited to participate in the annual orientation of new Commissioners for two reasons: 1-to provide a refresher on the role and responsibilities of the BBC, and 2-to provide an opportunity for incumbent BBC members to share their experience and commitment in solidarity with new members.

Lastly, we recommend that the BBC periodically conduct a self-assessment of its effectiveness as a governing body. This assessment could be conducted as part of the annual meeting or at least every other year. We believe that such an assessment will provide an opportunity for continuous improvement and BBC member engagement.

j. Succession and Removal

The succession of Board leadership is a matter of statute. The President-Elect automatically ascends to become President at the annual meeting. Should the President become incapacitated or otherwise be unable to serve temporarily or permanently, the Vice President, (not the President-Elect), succeeds as President until the end of the succeeded President's unexpired term.

Replacement of a commissioner before the end of his/her term, by statute is made by appointment of the BBC for the unexpired term. There are no provisions, however, for the removal of a Commissioner or Officer of the ASB. Best practices for governing boards include processes for removal of board members and officers for good cause.

Although the Task Force did not conduct an in-depth analysis of the statutory succession process, we recommend that the BBC consider whether that process best serves the needs of the ASB in the event of the incapacitation of the President—and if appropriate pursue legislative change to that process.

We believe that some provision should be made for the removal of a Commissioner or Officer of the ASB when warranted by misconduct or dereliction of duty. Whether this would require a statutory change or could be included in ASB bylaws as implicit authority given the BBC under current statutory authority should be reviewed and determined by ASB's General Counsel.

k. Relationship with AL Supreme Court

Because the ASB is overseen by the Alabama Supreme Court and is subject to Court Rules, it is essential that the ASB and Supreme Court maintain a collegial, cooperative and collaborative relationship. By tradition, one of the Court's justices serves as liaison to the ASB. The effectiveness of the liaison role has rested entirely on the engagement and interest of the justice assigned that responsibility by the Court. We believe the entire BBC understands the critical importance of a positive relationship with the Court.

We acknowledge the critical role that the ED plays with respect to this relationship, and the efforts Executive Director Lovell has made to enhance this relationship by regular meetings and communications with the Chief Justice and Associate Justices. We should note that there is a lack of clarity on the part of the Court regarding the ED's authority and accountability for disciplinary matters. Alabama Court Rules gives the GC, not the ED, exclusive authority over disciplinary matters.

We recommend that the Executive Council regularly track the relationship with the Court and identify issues that present threats to or opportunities for a positive and collaborative relationship. We also recommend committing to a regular mid-year meeting with the Court held in conjunction with the Judges' mid-year meeting, as well as to quarterly lunches/social events. Consistent with state ethical and financial guidelines, the BBC should explore ways to underwrite the costs of judicial participation in the ASB's annual meeting to incentivize participation. Lastly, we recommend that the Court be invited to participate in ASB's strategic planning process to ensure the alignment of ASB and Court goals and objectives.

We recommend that the ED continue her efforts to enhance and improve communications with the Court, and we believe that more consistent engagement between the GC and the Court would eliminate any confusion regarding accountability for disciplinary matters.





I. Dues (License Fee)

By statute the ASB is given the authority to set the annual license fee for ASB members. No Court or legislative approval is required. Likewise, the BBC has sole authority to approve section dues and pro hac vice fees. Changes to these fees should be based on financial projections to ensure the necessary resources are available to meet the ASB's core functions as well as its strategic objectives. Financial projections should also take into account client security fund trends so that license fees can be adjusted ahead of potential demand.

We recommend that the BBC conduct a comparison study of mandatory bar dues/license fees, to include pro hac vice. We understand that the current review of ASB financial processes by the Alabama Public Examiner may result in additional considerations regarding these fees, and expect additional findings and recommendations may follow from that effort.

m. ASB Awards

The BBC votes annually to approve awards to individuals and organizations in a variety of areas. This tradition provides a unique opportunity for the ASB to promote its core values and contributions of its members and others to the legal system in Alabama. For that reason, it is important that the process be one that provides the broadest opportunities for participation by eligible individual and organizations. To bolster the legitimacy of the process, it should be one based on published criteria and transparent to members of the ASB and the public.

We recommend that the BBC review and validate the current categories for ASB awards. We also recommend that the BBC direct the EC or appoint an Awards Committee to receive and review nominations, and to make recommendations for approval to the BBC. A call to the general membership and the public for award nominations should be made well in advance to provide the maximum opportunity for participation. Criteria for each award should be published and used in the review process to drive the committee's recommendation process. Lastly, the BBC should endeavor to create a process that promotes diversity, inclusion and equity, to ensure that its awards reflect the community it serves.

Operations

The following is a more detailed discussion of the Task Force's findings and recommendations in the areas relating to ASB operations. It is important to note that since the appointment of the task force in March 2021, the consultant has worked closely with the Interim Executive Director, Ellen Brooks, and the newly appointed Executive Director, Terri Lovell in all of the operational areas outlined below. As a result, for many of the areas of concern identified by the task force, changes have already been made and/or processes implemented for improvement.

a. General

1.) Continuity of Operations: The ASB has in place a 2015 Emergency and Disaster Response Plan. The plan covers many important areas, including response to a pandemic. The current pandemic has challenged the ASB's resiliency, and we should be proud of how ASB staff has adapted and continued to deliver excellent service to our members and the public. The current plan, however, does not include training and exercise requirements. It also lacks strategies for how to respond to an active shooter scenario.

We recommend that the ASB's plan be reviewed and updated on an annual basis, and that annual training be included for staff and Bar leadership. Executive Director Lovell is aware of the need for an update and is in the process of planning training for staff and board leadership.

2.) Documented Policies and Procedures: The ASB has collected many of its governance and operations policies into one digest—the Presidents' and Leaders' Manual. Although the Manual is very helpful and provides a good overview of ASB governance and operations, it is in some areas outdated and lacks clear distinctions between governance and operations with respect to areas of responsibility and focus. There are additional policy and procedure documents outside the Manual that cover a number of areas to include personnel and finance. Best practices suggest that consolidating operational policies and procedures into easy-to-find manuals, by critical area, promotes adherence by staff and volunteers.

We recommend updating the President's and Leaders' Manual, with a focus on those policies and procedures associated with governance rather than operations. The Manual should be a ready source for general information about the ASB's history, structure, statutory and regulatory responsibilities, standards of conduct, strategic plan, board meetings, etc. Executive Director Lovell and Finance Director Hall are currently working with the Alabama Public Examiner to review the financial management of the ASB. Once complete, we recommend that all financial policies and procedures be consolidated in a financial policies and procedures manual. We also understand that a review of personnel policies, begun by Interim Director Brooks, has continued under Executive Director Lovell, and that an updated employee policies and procedures manual is underway.

3.) Operating Agreements: As mentioned above, there are no documented agreements between the ASB and the ASBF, or the ASB and other affiliated organizations.

As recommended in the Governance section above, memorandums of understanding or like agreements would not only clarify the BBC's role with respect to these organizations, but would also lay out policies and procedures with regard to how the ASB will operate with each organization.

4.) OGC-ED Relationship: We addressed the reporting and performance management issues associated with this relationship above in the Governance section. The Task Force also found that there is a lack of clarity regarding operational authority with respect to our two



chief executives.



Alabama Supreme Court Rules give the GC authority to appoint and supervise the members of his/her staff. It is unclear from this delegation of authority how much independent authority the GC has with respect to management policies and procedures (e.g., time off, compensation, work hours, standards of conduct). The Rule gives the EC authority to confer any other duty or responsibility deemed necessary. We note that the current relationship between the GC and ED is collegial and collaborative—issues affecting operations are worked out on an informal and ad hoc basis. We also understand, however, that future ASB executives may not enjoy the same degree of collegiality and collaboration.

Pursuant to authority granted it by Supreme Court Rule, we recommend that the EC formalize the management relationship between the ED and GC, clarifying their respective authority and accountability for the conduct of ASB operations.

5.) Litigation and Claims: By practice the GC has been assigned the responsibility to manage the ASB's legal affairs, including litigation and legal claims. This responsibility and authority include providing advice to the BBC on potential legal issues that might adversely affect the ASB as well as managing outside counsel when required to respond to legal claims and challenges. These duties are in addition to the GC's role as chief disciplinary officer for the Bar. Whether and how to engage in litigation is traditionally a governance responsibility. General Counsel Shaul has done an excellent job of keeping the BBC abreast of legal matters that affect the ASB—this traditionally has occurred on an ad hoc basis.

We recommend that the EC, consistent with our recommendation above, clarify the GC's authority and duties with respect to general legal matters—from a governance and operations perspective. That delegation should be documented. We also recommend that the GC provide a quarterly report on all current and pending legal matters of significance to the BBC.

6) Corporate Citizenship: It is important for the ASB to reflect the very best of corporate citizenship. The ASB should be a model organization in this regard. Corporate citizenship continues to grow in importance with our membership, particularly with our Young Lawyers Section, as well as the public. Should we promote and incentivize volunteer opportunities for staff (e.g., participation in community charity activities)? Does the ASB, for example, have a recycling program and encourage/incentivize car-pooling?

We recommend that the BBC adopt a good corporate citizen policy, and delegate full authority to the ED to implement appropriate programs, recognizing that resources and state personnel policies may limit such initiatives.

b. Financial Management

1) Compliance: Compliance with federal and state law and regulations (including AL Supreme Court Rules) is non-negotiable and vitally important to the ASB's standing with its members and the public. Executive Director Lovell and Finance Director Hall have been engaged in a detailed review of the ASB's financial operations with the Alabama Public Examiner. The Task Force is advised that the review includes an assessment of ASB's compliance with state law. The ASB also engages a private audit firm to review the financial management of non-treasury funds. These audits are conducted to ensure compliance with accepted accounting principles. An important part of the Public Examiner's review will be to determine whether these funds, traditionally excepted from state audits, will be considered subject to state law and regulation.

We recommend that the ASB adjust and document its financial management policies as necessary based on the final report of the Public Examiner. We also recommend that the ED and Finance Director certify compliance with those policies to the BBC on a quarterly basis.

2.) Internal Controls. Internal controls are essential to the financial health of the ASB. There are many controls in place to safeguard ASB funds. We understand that Finance Director Hall is in the process of updating and consolidating these controls. One area of particular interest to the Task Force are the controls in place for credit card use. Under current practice the only credit card holder for the ASB is the ED, and the ED's expenditures are reviewed and reconciled by the Finance Director and then approved by the ED. We believe this process provides an opportunity for misuse, and lacks the oversight necessary to prevent misuse. We also find that many of the controls in place do not provide for continuity of operations should the ED become incapacitated or leave the organization.

We recommend modification to the internal controls regarding credit card use, which would include review of the ED's expenditures by the President or his/her designee. We also recommend that internal controls take into account and identify appropriate staff or officers to act in the absence of the ED—some succession authority is included in the ASB Staff Policies and Procedures Handbook under the Succession Plan section. The plan should be reviewed and updated as well.

3.) Budget Process: Historically the ASB budget has been developed based on historical data without the active participation of internal departments. Sections have not been included in or required to document/publish their own budgets. Non-treasury funds (non-dues revenue) have not been included in the ASB budget, and as mentioned above audited separately by a private accounting firm.

We recommend that the ASB budget include all revenue and expenses, compartmentalized as necessary to comply with state law—this may be affected by the ongoing review by the Public Examiner. We also recommend that all ASB departments be included in the creation of the annual budget with assigned goals and limitations, and cross-referenced to the ASB strategic plan.





4.) Audit Process: As mentioned above, the ASB has traditionally undergone two audits: one private (annually) and one public (every 4 years). We are advised that this may change based on the ongoing review by the Public Examiner. We therefore, offer no recommendations with respect to the conduct of ASB audits.

5.) Board Oversight and Competence: The current Finance and Audit (F&A) Committee is comprised of the President and appointed BBC members. There are no documented criteria for selection of F&A committee members. The EC currently serves as the Investment Committee. Under current ASB policy, the Investment Committee may hire financial experts to assist in its role. Like the F&A Committee there are no criteria regarding the expertise of appointed EC members. A best practice for non-profit organizations is to appoint board members with financial expertise to such committees.

We recommend that criteria be established for the selection of Finance and Audit Committee members that require some financial knowledge or competence. We recommend that the BBC establish a separate Investments Committee, and again that members with relevant experience or competence be appointed.

6.) Transparency: As a general observation, ASB financials are difficult for members and the public to find. The ASB budget can be found on the Alabama Executive Budget Office website, but not on the ASB's own website. Sections, likewise, do not report budgets or expenditures to their members. Providing easy access to members and the public regarding an organization's budgets, financial reports and audits is a best practice.

We recommend making the ASB audit reports and budgets easily accessible on the ASB's website. We also recommend that sections provide annual financial reports to its members, and that this requirement be included in published section guidelines.

7.) Long Range Financial Plan: Although the ASB has a current strategic plan, it does not have a long-range financial plan to support it. The ASB Foundation has a long-range capital improvement plan, presented to the EC on an annual basis.

We recommend that the F&A Committee in coordination with the ED and key staff develop a long-range financial plan to complement the ASB strategic plan going forward.

8.) Procurement Policy: For the expenditure of treasury funds (dues/license fees), the ASB is subject to Alabama state procurement law and regulations. There is no policy with regard to the procurement policy (e.g., competition requirements, sole-source criteria) for non-treasury funds (non-dues revenue). All expenditures above \$10,000 require F&A Committee approval; many of the routine contracts associated with operations exceed that amount.

We recommend adoption of a procurement policy for all ASB expenditures, including small purchases for all ASB entities. We also recommend reconsideration of the requirement for F&A approval. Given the many routine contracts and services required to operate the ASB that exceed the \$10,000 cap on ED authority, we believe it may be appropriate to raise the ED's procurement authority given her primary responsibility for ASB operations. To ensure ongoing oversight, a quarterly report of contracts exceeding \$10,000 could be required.

We recommend that the ED be given emergency authority to exceed whatever limit is established to protect ASB personnel and property. This authority should be included in the ASB's financial policy manual and its disaster and response plan.

9.) Insurance: Under the theory that the ASB is a state entity and its staff and volunteers are state actors (see discussion above under 3c.1), the ASB is covered by the State General Liability Fund and/or may be immune from suit. The ASBF maintains a number of policies covering a range of risks.

We recommend that the F&A Committee conduct a review of current insurance coverage to ensure adequate protection of ASB personnel and property, and to make recommendations regarding the possible combination of policies to achieve better rates. We also recommend that ASB and ASBF policies be reviewed on an annual basis.

10.) Reserve Policy: Under current policy, the ASB should keep 60% of its prior annual expenses in reserve. For the ASBF, reserves equal to 50% of its total capital assets are to be kept in reserve. The current policy does not direct how to use surplus funds in excess of directed reserve amounts.

We recommend that the BBC adopt a policy for how to use surplus funds in excess of designated reserve amounts.

11.) Tax Exemption: The ASBF, by Alabama statute, is a non-profit public corporation and is exempt from state tax. Its status with respect federal tax law is unclear. The AL Lawyers Assistance Foundation and Lawyers Render Service non-profit organizations are subject to federal tax law as 501c(3) organizations. As such they are subject to specific requirements and limitations covering a number of matters including, but not limited to: annual reporting, authorized activities, governance structure, and political activities. We are advised that as part of the Public Examiner's review of the ASB that the relationships between the ASB and these organizations are included.

We recommend that upon completion of the Public Examiner's review that in addition to and consistent with anything contained in the PE's report regarding these organizations, that a review of the tax-exempt status of each our affiliate organizations be reviewed to ensure compliance with state and federal requirements.



12.) Fraud Prevention. The ASB has a current fraud prevention policy. Primary responsibility for fraud prevention is assigned to “executive management.” Under the policy, the GC is responsible for investigating allegations of internal fraud. There are no provisions for allegations against the GC, ED, or Commissioners; and there is no whistleblower policy. Although fraud prevention training for staff and commissioners may have occurred in the past, such training has not been routine or documented. There are no documented procedures for conducting background checks or drug testing for staff with access to ASB financial systems.

We recommend the following to improve ASB’s fraud prevention posture:

- Adoption of a formal whistleblower policy
- Documented fraud prevention training program
- Specific documented process and procedures for fraud allegations, including those against senior staff and BBC members

13.) Travel Policy: The current ASB travel policy generally mirrors and is consistent with the AL state travel policy for treasury funded travel. Non-treasury funded travel is approved by the ED, including the ED’s own travel. Spousal travel for the President and ED has been authorized in the past and paid from non-treasury monies.

We recommend that travel for the ED, GC and Officers be approved by the President. As with other financial policies, we understand the ASB travel policy is included in the review by the Public Examiner and any change in policy should be consistent with the final report by the PE.

c. Personnel Management

1.) Compliance: The number of federal, state and local laws and regulations affecting the workplace continues to grow. The COVID pandemic has further complicated the world of personnel management with often competing and conflicting requirements for organizations. After eliminating HR manager position a few years ago, the ASB must rely on its senior staff and Personnel Committee to discern what is required in terms of compliance matters related to its workforce. Interim Executive Director Ellen Brooks began the process now continued by Executive Director Lovell to assess the ASB’s compliance with personnel standards. Issues like employee classification (exempt vs. non-exempt), leave policies, and overtime, have already been addressed.

We recommend the following to ensure that the ASB’s personnel policies, procedures and practices are compliant with all laws and regulations:

- Support the acquisition of a staff or contract HR expert to provide consistent advice and support
- Support the continued review by Executive Director Lovell in coordination with the Personnel Committee of ASB manuals and clarify authority with respect to personnel decisions.

2.) Culture: To complement ASB's values of Trust, Integrity and Service, Executive Director Lovell has instituted a theme for the workplace centered on the concepts of Engage, Equip, and Empower. She reinforces these cultural principles via weekly messages and recognizes employees that model them via on-the-spot challenge coins. She has also increased communications with staff, with an emphasis on transparency and respect. Workplace ethics (standards of conduct) training has been introduced as a component of staff training to reinforce standards of conduct.

We applaud our ED's efforts to strengthen ASB culture and recommend that she continue those efforts. We also recommend that workplace ethics training be documented and conducted for all new employees as part of their on-boarding process, and for all employees at least annually. Such training should incorporate modules that cover, for example, anti-discrimination and anti-harassment policies.

We also believe that efforts in this area will enhance recruitment and retention of staff.

3.) Competence: As with the legal profession in general, technology has changed the way the ASB conducts business. Nearly every business process has become automated. These changes require a workforce that is not only competent to operate today's applications, but is trained and equipped to adapt to tomorrow's changes. Most ASB job descriptions lack technology proficiencies as elements. And individual and collective training necessary to master new skills is not incorporated in performance objectives.

As in many areas reviewed by the Task Force, Executive Director Lovell has identified the need to review and update job descriptions and is putting plans in place to develop individual and collective training plans to sustain and improve staff competencies in every area. We recommend that she be given time to institute her plan and report progress as appropriate to the Personnel Committee.

We are also aware the ED Lovell is conducting a review of ASB's performance management process to improve feedback to employees and to establish meaningful metrics for individual and team performance. Consistent with best practices in HR management, her plan includes a focus on coaching and mentoring employees—i.e., not waiting for the annual review to talk about an employee's performance. We recommend supporting this approach, to include authorizing additional staff or contract support to automate and track this process.

d. Information Technology

1.) Compliance: For the most part, standards for an organization's IT enterprise are established by the industry. Compliance with these standards, much like compliance with accounting standards with regard to financial management, strengthen an organization's IT systems. Most of the ASB IT infrastructure and processes have been out-sourced to a commercial provider. The ASB receives informal assurances of compliance with IT industry standards from its vendor.





We understand Executive Director Lovell has already begun the process of engaging a firm specializing in IT system audits for organizations like the ASB. We expect results of the audit will be shared with the BBC and appropriate changes made as necessary. We also recommend that the ASB conduct an IT audit at least every two years to ensure its IT enterprise complies with industry standards.

2.) Competence: The ASB currently employs one IT professional to manage the contract with the outside IT vendor and to handle help desk and other internal IT tasks. The job description for that position does not require any IT certifications or training. Even though the bulk of IT support comes from ASB's commercial provider, it is critical that the IT manager for the organization maintain the proficiencies necessary to oversee the work of the provider as well as handle internal tasks.

As with the reviews underway of the organization's job descriptions, Executive Director Lovell is aware of the special attention required for ASB IT staff and will be not only updating the job description but also implementing a training and certification plan to strengthen current staff's skills and abilities. We encourage, as part of the budget process, the BBC to support funding technology training and certifications required as part of this initiative.

3.) Security: The ASB relies heavily on its IT commercial provider to secure ASB's IT enterprise. Of equal importance is the need to train staff and Commissioners on security measures to counter the host of attacks facing the ASB and other organizations (hacking, phishing, ransomware, etc.) Some training has occurred on an ad hoc basis, but there is no documented IT security training program. The ASB allows employees to use their own smart devices to conduct ASB business—often called a BYOD (Bring Your Own Device) policy. This policy is not uncommon and has become more prevalent given the increase in remote work due to the pandemic. The ASB lacks, however, a documented policy regarding the security of information and data on personally owned devices.

We recommend the following to strengthen ASB's security posture:

- Review and increase, if necessary, cybersecurity insurance coverage
- Establish and document individual IT security training for ASB staff and BBC members
- Establish a BYOD policy that incorporates industry-standard security measures and protects the ASB from unauthorized disclosure of personal or sensitive information

4.) Continuity and Redundancy: Because much of the ASB's IT enterprise resides outside the organization and is managed by a commercial provider, it may be protected from onsite disasters and more quickly recovered. On the other hand, if the commercial provider's infrastructure and/or systems experience significant disruption, the ASB may have little to no ability to influence continuity or recovery.

We recommend that as part of the recommended review of the current ASB Disaster and Emergency Response Plan special attention be given to IT systems continuity and recovery. We also recommend that this issue be specifically included in the planned IT audit to ensure that the ASB's IT enterprise is backed up and protected in the event of disaster or other disruptive event.

5.) Email and Internet Policy: There are currently no published guidelines regarding staff use of ASB's email system or use of ASB's internet service provider. As a general rule, such use should be limited to official activities of the ASB. Recognizing that some personal use by employees is inevitable, a best practice is to document proper usage policies that prescribe limitations for personal use, if permitted.

We recommend that the ASB adopt an email and internet use policy for ASB staff, and that the policy be included in new employee on-boarding and incorporated in workplace ethics training sessions for all staff.

6.) Telecommuting Policy: Telecommuting, or telework, has been available on an ad hoc basis for some ASB employees. The COVID pandemic has created the necessity to permit and, in some cases, require ASB staff to work from home or outside their traditional office environment. Executive Director Lovell has reviewed the current practice and taken into account lessons learned from the pandemic. She intends to implement a telecommuting policy that provides clear guidance to employees and protects ASB's resources and IT systems.

We applaud our ED's initiative in this regard and recommend that she provide a report on completion of this effort to the EC and Personnel Committee.

7.) Licenses/Subscriptions: The ASB expends significant resources on business application licenses and subscriptions. In the past, renewal of some of these licenses and subscriptions has been automatic. Executive Director Lovell has begun an assessment of business processes and software applications for all ASB operations. Her efforts include coordination with General Counsel Shaul regarding case management software.

We support the review of software licenses and subscriptions and recommend that the BBC include as part of its financial policies a requirement that licenses and subscriptions be reviewed by staff on annual basis prior to approval of the ASB budget to determine whether renewal is cost effective and essential for ASB operations.

e. Information Management

1.) Compliance: As state entities, the ASB and ASBF may be subject to state law and regulations regarding the maintenance and disclosure of organizational records. Retention and disclosure policies have in the past been lacking. Executive Director Lovell has continued efforts begun by Interim Director Brooks to assess information management standards and to establish policies and procedures for document retention, safeguarding and disclosure.



We applaud this effort and recommend that the ED and GC provide a joint report to the BBC regarding this effort and obtain appropriate Board approval for any high-level policy issues associated with this area of critical importance to the integrity of the ASB and ASBF.

2.) Record-Keeping: Among the matters brought to the light as part of the Task Force's work has been the difficulty in some cases of finding official records and documents. Establishing accurate indexes and locations for electronic and hard-copy documents is a best practice. It is also important to establish procedures that protect ASB information from unauthorized access and disclosure.

We recommend that in addition to the recently established retention policy, that procedures be developed to provide for easy access to ASB records by authorized personnel; procedures should also include standards for safeguarding records and information. Training on these procedures should be included in new employee on-boarding and reinforced by annual workplace ethics training.

f. Program Management

1.) Program Review Process: ASB programs compete for limited resources. Programs that are no longer relevant or sustainable should be eliminated to make room for programs of greater value to ASB members and the public. Many nonprofit organizations, to include state bars, have adopted a program review process to evaluate existing programs as well as assess proposals for new programs. This process would use criteria approved by the BBC to evaluate existing programs to determine whether they should continue or be eliminated. Similarly, the criteria would be applied to proposed new programs before approval and included in the ASB's budget for funding.

We recommend that the BBC task the Strategic Planning Committee to, in conjunction with senior staff, develop a program review process. Among the criteria that the BBC might consider, we recommend that alignment with the ASB's core functions be included. All programs and services should be reviewed using this process for relevance and value, and those that fail to meet approved criteria should be eliminated.

2.) Marketing: It remains the perennial case that ASB members largely do not appreciate the many programs developed for their support and benefit. Marketing of ASB programs is made more difficult by the offerings of many other bar organizations and commercial interests. Improvement of communications regarding ASB programs seems to be included in every strategic plan.

We recommend development of a marketing plan to promote ASB programs--this may require the BBC to provide funding to contract with a marketing consultant to explore new and effective ways to market ASB programs (e.g., digital advertising, public service announcements). We also recommend exploring partnerships with local and minority bars to promote programs of mutual interest and relevance to our respective members.

3.) Sections: Historically the ASB has permitted a number of sections to “opt-out” of ASB financial management and support. The majority of the ASB’s 31 sections fell under the ASB’s financial management and received administrative support. Recent measures have been taken by ASB leadership to bring all of the sections under the ASB’s financial management and administration. It is our understanding that this effort has included the development of section guidelines to clarify the authorities and responsibilities associated with administering sections. As with the committees and task forces, there are no documented policies for sun-setting sections that are no longer active or viable.

We support the development of updated section guidelines as well as the consolidation of all sections under ASB financial management and administration. Consistent with our recommendation that a review of committees and task forces be conducted to sun-set those that are no longer relevant or needed, we recommend a similar review be conducted of ASB sections. Given limited staff resources available to support sections, it is important that only those sections that are active and provide value to ASB members be continued.

4.) CLE: The ASB promulgates and enforces the rule and regulations governing the mandatory continuing legal education (MCLE) requirements for Alabama lawyers. The ASB’s MCLE Commission accredits CLE programs, and only those programs approved by the Commission qualify for MCLE credit. The ASB also offers its own CLE programs. As a practice, the ASB has traditionally limited its own CLE offerings, leaving the majority of the market to other providers. Although the ASB’s dual role has not been formally challenged, we recognize the potential for a perceived or real conflict of interest if the ASB in its regulatory role were to give preferential treatment to its own programs or other preferred providers, thereby tipping the scales in a competitive market. This risk might be heightened should the ASB decide to increase its CLE programming as a source of non-dues revenue.

We support the ongoing effort to provide free and low-cost CLE to ASB members, particularly in the area of practice management and ethics. We recommend that the MCLE commission consider and propose a policy to the BBC that reduces the risk of conflict of interest as well as avoidance of unfair program competition with non-ASB CLE providers.

f. Public and Government Affairs

1.) Media Relations: ASB’s image with respect to its members and the public is affected by how the ASB is covered in traditional and social media. The communications protocols contained in the President’s and Leaders’ Manual provides excellent guidelines for how the ASB communicates to its members and the public. The protocols include social media. It is critically important that the ASB maintain good relationships with traditional media (e.g., Print, TV, Radio) as well as an active and positive social media presence.

We recommend that as part of the ongoing review by ASB leadership of the contents of the President and Leaders’ Manual, that the Communications section be reviewed and that consideration be given to publishing a separate policy document that addresses communications guidelines, including appropriate use of social media, for the BBC, ASB staff and sections, committees and task forces.







2.) Website: Lawyers and members of the public look to the ASB's website as a primary source for information and engagement. Executive Director Lovell and staff have already begun a review of the website with a view towards updating the site to improve its functionality and relevance. Including user input as well as tracking website analytics (e.g., most accessed pages on the site) are best practices in keeping an organization's website relevant and valued. ASB's website is currently centrally managed by the Communications Department. Many organizations have moved away from this "web master" model by giving permissions to subject matter experts within the organization to keep content updated and relevant.

We support Executive Director Lovell's initiative to improve our website and recommend consideration of a website audit to ensure that its content is internally consistent and mission-focused. We also recommend consideration be given to de-centralizing internal control of website content to aid in keeping the website fresh—recognizing that implementation would require training and oversight. Lastly, we believe the website should be as accessible as possible to the public and our members. To the extent required by the Americans with Disabilities Act (ADA), and consistent with best practices, the ABA website should be assessed and improved as necessary. We understand such an assessment would be included in the IT audit planned by our Executive Director.

3.) Government Affairs: Much of the ASB's efforts with regard to legislative affairs is handled by a part-time legislative counsel. Other government relations are traditionally managed on an ad hoc basis by Bar leadership. Because the ASB's mission has and will continue to be affected by government decisions at all levels, it is important that we provide the necessary resources to ASB staff to track legislation as well as other government activities.

We recommend that the BBC provide the necessary resources to ASB staff to effectively monitor government affairs. We also recommend that the BBC conduct an annual survey of its members to determine existing relationships with government officials that could be used to strengthen ASB's standing and influence. Compliance with the Keller doctrine should be incorporated and emphasized with respect to all ASB governmental affairs activities.

4.) Public Outreach: Central to ASB's mission are its obligations to the public. Improving access to justice and improving the discipline process to protect the public are consistently included in the ASB strategic plan. Much of the outreach effort of the ASB has been traditionally focused on members.

We recommend the appointment of a task force to develop a more aggressive public outreach strategy, or alternatively assigning this charge to an existing committee or task force. We also recommend that a review of the current ASB publications for the public be included in this effort to assess relevance and readership.

5.) Public Statement and Crisis Communications: The President's and Leaders' Manual provides excellent guidelines for communications to the public, and during a crisis. Crisis communications training for organization leaders is a best practice, but has not been required in the past for ASB leadership.

We recommend that the current crisis communications protocols be reviewed and validated, and that annual training for the President, Executive Director and General Counsel be included in the ASB budget and made a matter of policy.

6.) Brand Management: The ASB has a comprehensive and excellent brand guide contained in the current President's and Leaders' Manual. We are advised by Executive Director Lovell that ASB's brand has been used by a number of outside individuals and entities without authorization. Maintaining and protecting ASB's brand is an important aspect of how our members and the public perceive our organization.

In addition to the Executive Director's efforts to ensure consistency with respect to internal use of ASB's brand, we recommend that the BBC provide resources, when necessary, to include legal action, to protect ASB's brand from unauthorized use.

Conclusion

We believe ASB leaders are well-positioned to complete the process of improving governance and operations. The theme for this effort has been "Growing Ever Stronger," -- inspired by the Alabama State tree, the Longleaf Pine. Staying the course, the ASB will reinforce those things that work well and improve those things that warrant change.

Appendices:



- 1-ASB Task Force Appointment Order, 2 Feb 2021
- 2-ASB Task Force Appointment Order, 24 Aug 2021
- 3-ASB Task Force Worksheet