

AGENDA ITEM

JANUARY 10 - Board of
Governors November 14, 2009
Minutes

THE STATE BAR OF CALIFORNIA

MINUTES

BOARD OF GOVERNORS MEETING

LOS ANGELES, CALIFORNIA

SATURDAY, NOVEMBER 14, 2009

The Board of Governors of The State Bar of California convened in open session in the Board Room of the State Bar offices at 1149 S. Hill Street, Los Angeles, California 90015 2:00 p.m. on Saturday, November 14, 2009, Howard B. Miller presiding.

The following members of the Board of Governors were present: James H. Aguirre, Lowell Carruth, Joseph L. Chairez, Laura N. Chick, Angela J. Davis, George O. Davis, Jeannine English, William H. Gailey, Clark E. Gehlbach, William N. Hebert, Rex Heinke, Cheryl L. Hicks, Patrick Kelly, Paul A. Kramer, Jr., Wells Lyman, Michael D. Marcus, Gwen Moore, Richard A. Rubin, Jon Streeter, Michael A. Tenenbaum, and Patricia P. White.

The following members of staff were present: Starr Babcock, Kathleen Beitiks, Diane Curtis, Mary Lavery Flynn, Francisco Gomez, Robert A. Hawley, Judy Johnson, Dean Kinley, Steve Mazer, Gayle Murphy, Cathy Torney, Peggy Van Horn, Colin Wong, and Larry Yee.

Also present: Anthony Williams, the Bar's outside legislative consultant

The roll-call vote was taken, and upon motion made, seconded and unanimously adopted, it was

RESOLVED that the roll-call vote will be substituted for the vote unless otherwise noted.

10 Upon motion made, seconded and unanimously adopted, it was

RESOLVED that the minutes of the meeting of the Board of Governors held on Friday, July 17, 2009, in Los Angeles, California, hereby are approved as written.

10 Upon motion made, seconded and unanimously adopted, it was

RESOLVED that the minutes of the regular meeting of the Board of Governors held on Saturday, September 12, 2009, in San Diego, California, hereby are approved as written.

- 30 Mr. Miller, President gave no report
- 41/42 Ms. Johnson, Executive Director/Secretary gave no report
- 50 All items on the consent agenda were presented to the Board, and no objection being raised thereto, the following items on the consent agenda were deemed unanimously adopted.
- 51,52, 53 **RESOLVED**, upon recommendation of the Board Planning, Program Development, & Budget Committee, that the Board hereby receives the financial statements for the quarters ended June 30, 2009 & September 30, 2009, as certified by the Chief Financial Officer, and on file in the San Francisco office of the State Bar.
- RESOLVED**, upon recommendation of the Board Planning, Program Development, & Budget Committee, that the Board hereby receives the investments reports for the quarters ended June 30, 2009 & September 30, 2009, as certified by the Chief Financial Officer, and on file in the San Francisco office of the State Bar.
- RESOLVED**, upon recommendation of the Board Planning, Program Development, & Budget Committee, that the Board hereby receives the Client Security Fund reports for the quarters ended June 30, 2009 & September 30, 2009, as certified by the Chief Financial Officer, and on file in the San Francisco office of the State Bar.
- 54-121 **RESOLVED**, that, upon recommendation of the Discipline Oversight Committee, the Board of Governors hereby approves the Rules of Procedure for Fee Arbitrations by the Kern County Bar Association in the form attached hereto as Attachment A as being in compliance with Business and Professions Code sections 6200-6206 and the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitrations.
- 54-122 **RESOLVED**, that upon recommendation by the Discipline Oversight Committee, the Board of Governors hereby approves the revisions to the Notice of Your Rights After Arbitration form in the form attached hereto as Attachment A.
- 54-131 **RESOLVED**, following publication for comment, during which no comments were received, and upon recommendation of the Board Committee on Regulation and Admissions, that the Board of Governors of The State Bar of California hereby approves the proposed amendments to Title 4. Admissions and Educational Standards; Division 1. Admission to Practice Law in California rules, in the form attached to these minutes and made a part hereof, to be effective November 14, 2009.

54-161 **RESOLVED**, upon recommendation of the Board Committee on Legal Services, Pro Bono and Equal Access, the Board of Governors approves the revisions to the President's Pro Bono Service Awards as set forth above, and it is

FURTHER RESOLVED, that staff is authorized to make appropriate changes to the awards nomination materials in preparation for printing and distribution.

111 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, following publication for comment and no comments having been received, and upon recommendation of the Board Committee on Operations, the Board of Governors of the State Bar of California hereby adopts the amendments to Rule 6.1 of the State Bar Rules in the form attached.

All members present and recorded on the roll-call slip voted yes on the above matter.

112 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, following publication for comment and no comments having been received, and upon recommendation of the Board Committee on Operations, the Board of Governors of the State Bar of California hereby adopts the amendments to Rule 6.31 of the State Bar Rules in the form attached.

All members present and recorded on the roll-call slip voted yes on the above matter.

113 The discussion on NOVEMBER 113 - State Bar Sponsored Legislation – Mandatory Fee Arbitration was tabled until the Board's January 2010 meeting.

114 The discussion on NOVEMBER 114 - State Bar Section and Committee Sponsored Affirmative Legislative Proposals was tabled until the Board's January 2010 meeting.

The below reports of action were presented to the Board; these actions were taken by the Board Committee on Operations, on behalf of the Board, between regularly scheduled Board meetings.

115-A Approval of Board Committee Assignments for Board Year 2009-2010, Report of Action Taken September 4, 2009, on behalf of the Board Between Meetings

[The above is a report of action taken by the Board Committee on Operations via conference call on September 4, 2009, on behalf of the Board between regularly scheduled Board meetings. A quorum had been reached and as there was no objection to the item on consent, the assignments, as attached, were deemed approved.]

115-B

A report was presented which contained the following resolution:

RESOLVED, that the Committee on Board Operations, acting on behalf of the Board of Governors and on behalf of the Board Committee on Stakeholder Relations, approves the recommendation of the Joint Committee on the Justice Gap Fund that no changes be made in the operation of the Justice Gap Fund, with the exception that it authorizes the establishment of one higher recognition level for donations of \$1,000 or more to the Justice Gap Fund.

[The above is a report of action taken by the Board Committee on Operations via conference call on September 4, 2009, on behalf of the Board between regularly scheduled Board meetings. All members, except Ms. Dumanis and Mr. Rubin, had been present and all members present, had voted yes.]

115-C

A report was presented which contained the following resolution:

WHEREAS, representatives of the State Bar of California ("State Bar") and Service Employees International Union (SEIU) Local 1000, operating under a Service Agreement with SEIU Local 535 ("Union"), met and conferred pursuant to California Government Code sections 3505 and 3505.1 and the State Bar's Rules & Regulations for the Administration of Employer-Employee Relations, with a view to reaching agreement on the Memoranda of Understanding (MOUs) for the General and Attorney Bargaining Units to be effective in 2009; and

WHEREAS, the Union and State Bar bargaining teams have met in good faith and reached tentative agreement on MOU terms to be effective in 2009; and

WHEREAS, the Union is presenting the tentative agreement to its membership with a recommendation that it be ratified; and

WHEREAS, the State Bar's Rules and Regulations for the Administration of Employer-Employee Relations provides at Sections 6.8 and 6.9 that the proposed MOU terms be submitted to the Board of Governors for ratification; now therefore, it is

RESOLVED, that the Board Operations Committee, acting on behalf of the Board of Governors in-between meetings, ratifies the proposed Memoranda of Understanding amendments for the General and Attorney Bargaining Units in the form discussed this date to be effective upon full ratification of the amendments by both the Board and the Union; and it is

FURTHER RESOLVED, that the Board's action here is contingent upon the Union fully ratifying the tentative agreement in the same form as presented here. The Board action here does not become effective until the Union confirms that its membership has fully ratified the tentative agreement as set forth here. If, for any reason, Union ratification does not occur, the action of the Board here is voided. The Board further reserves the right to withdraw this action at any time prior to Union ratification; and it is

FURTHER RESOLVED, that the Office of General Counsel and the Office of the Executive Director take the appropriate steps to effectuate these amendments.

[The above is a report of action taken by the Board Committee on Operations via conference call on September 4, 2009, on behalf of the Board between regularly scheduled Board meetings. All members, except Ms. Dumanis and Mr. Rubin, had been present and all members present, had voted yes.]

115D A report was presented which contained the following resolution:

RESOLVED, that the Board Committee on Operations, acting on behalf of the Board of Governors between meetings, hereby affirms the appointment of William Gailey as its chair, Joseph Chairez, Bonnie Dumanis, and Richard Frankel to a special investigative committee to conduct an investigation to determine if confidential information of the evaluation of Charles S. Pochigian by the Commission on Judicial Nominees Evaluation was improperly disclosed; and it is

FURTHER RESOLVED, that in the conduct of its investigation, the special investigative committee shall have the power under California Business and Professions Code section 6049 to take evidence, to administer oaths and affirmation, and to compel by subpoena attendance, testimony, and production of evidence.

[The above is a report of action taken by the Board Committee on Operations via e-mail poll on September 23, 2009, on behalf of the Board between regularly scheduled Board meetings. All members had responded yes.]

116 The roll-call vote was taken, and upon motion made, seconded and unanimously adopted, it was

RESOLVED, that upon recommendation of the Board Committee on Operations, the Board of Governors hereby authorizes the President, in consultation with the Executive Director, to develop and negotiate a reintroduction of the substance of SB 641(Corbett) of 2009, to extend the State Bar's membership fee authority to assess fees for active members for 2010 membership fees; and it is

FURTHER RESOLVED, that upon recommendation of the Board Committee on Operations, the Board of Governors hereby authorizes the President, in consultation with the Executive Director, to develop and negotiate a fee bill for 2011 membership fees, consistent with the budgetary and operational needs of the State Bar.

All members present and recorded on the roll-call slip voted yes on the above matter.

123 The roll-call vote was taken, and upon motion made, seconded and unanimously adopted, it was

RESOLVED, that following publication for comment and no comment having been received, and upon recommendation of the Board Discipline Oversight Committee, the Board of Governors of the State Bar of California hereby adopts the Client Security Fund rules in Title 3, Division 4, Chapter 1, in the form attached to be effective January 1, 2010.

All members present and recorded on the roll-call slip voted yes on the above matter.

124 The discussion on November 124 - Proposed Amendments to Rule 105, Rules of Procedure of the State Bar of California was tabled until the Board's January 2010 meeting.

125 The roll-call vote was taken, and upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon the recommendation of the Discipline Oversight Committee of the Board of Governors, that the Board of Governors hereby adopts the proposed amendments to the Rules of Procedure of the State Bar of California, in the form attached hereto as Appendix A, effective January 1, 2010.

FURTHER RESOLVED, that the aforementioned amendments to the Rules of Procedure of the State Bar of California shall apply to all pending and future matters.

All members present and recorded on the roll-call slip voted yes on the above matter.

132 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, following publication for comment and consideration of comments received, that the Board of Governors of the State Bar of California hereby adopts the proposed new and amended Rules of Professional Conduct of the State Bar of California, in the form attached to these minutes and made a part hereof, and hereby directs that said rules be transmitted by staff to the Supreme Court with a request that it be approved by the Court; and it is

FURTHER RESOLVED, that the Board's adoption of the proposed rules is subject to consideration of possible revisions following a comprehensive public comment distribution of the entire body of proposed rules.

All members present and recorded on the roll-call slip voted yes on the above matter.

141 This Item was withdrawn from the agenda

181 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Governors authorized the award of a three year contract with the firm of Sjoberg Evashenk to perform internal audit services for the State Bar.

All members present and recorded on the roll-call slip voted yes on the above matter.

701 Upon motion made, seconded and adopted, it was

RESOLVED, that the Board hereby appoints and elects Richard A. Rubin as a 2009-2010 vice president of the State Bar of California, as noted below in the revised list of 2009-2010 vice presidents:

William N. Hebert
Rex Heinke
Paul A. Kramer, Jr.
Michael D. Marcus
Patricia P. White
Richard A. Rubin

All members present and recorded on the roll-call slip voted yes on the above matter.

702 Upon motion made, seconded and adopted, it was

RESOLVED, that the Board affirms that all regularly scheduled meetings of the Board be held as listed on the attached three-year meeting schedule.

All members present and recorded on the roll-call slip voted yes on the above matter.

The Board went into closed session at 1:30 p.m., and those other persons present, including senior executive staff left the meeting.

The Board resumed open session at 2:00 p.m.

6010 The closed consent appointments agenda was presented to the Board, and no objection being raised thereto, the following items on the consent appointments agenda were deemed unanimously approved.

6011 **RESOLVED**, upon the recommendation of the Board Committee on Member Involvement Relations and Services, that the Board of Governors hereby reappoints the fee arbitrators whose names appear on the list attached hereto as Attachment A to the State Bar Fee Arbitration Department, each for a one-year term commencing January 1, 2010 and expiring December 31, 2010; and it is

FURTHER RESOLVED, that the Board hereby appoints the applicants whose names appear on the list attached hereto as Attachment B to the State Bar Fee Arbitration Department, each for a term commencing November 16, 2009, and expiring December 31, 2010; and it is

FURTHER RESOLVED, that the Board hereby reappoints Joel Mark, Oxnard, Presiding Arbitrator, for a term effective January 1, 2010 and expiring December 31, 2010.

6012 **RESOLVED**, upon recommendation of the Board Committee on Member Involvement Relations and Services, that the Board hereby appoints Douglas J. Hartsough, Brentwood, member, Client Security Fund Commission, effective immediately, replacing Richard C. Henderson, Fresno, resigned, for a term expiring at the close of the 2010 State Bar Annual Meeting (i.e., September 26, 2010), or until further order of the Board, whichever occurs earlier.

6013 **RESOLVED**, upon recommendation of the Board Committee on Member Involvement Relations and Services, that the Board hereby appoints Hon. Ronald B. Robie, Sacramento, Chair, California Commission on Access to Justice, effective January 1, 2010, and expiring December 31, 2010, or until further order of the Board, whichever occurs earlier.

6014 **RESOLVED**, upon recommendation of the Board Committee on Member Involvement Relations and Services, that the Board hereby appoints Roman E. Darmer, Irvine, and Senator Joseph L. Dunn (Ret.), Santa Ana, members, Board of Directors of Legal Aid Society of Orange County & Neighborhood Legal Services of Southeast Los Angeles County; each for a three-year term commencing December 1, 2009, and expiring November 30, 2012, or until further order of the Board, whichever occurs earlier.

6015 **RESOLVED**, upon recommendation of the Board Committee on Member Involvement Relations and Services, that the Board reappoints Douglas Scrivner, San Jose, member, CaliforniaALL Board of Directors, for a one-year term commencing January 1, 2010, and expiring December 31, 2010, or until further order of the Board, whichever occurs earlier.

6016 This Item was removed from the consent agenda. Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation from the Board Committee on Member Involvement, Relations & Services, that the Board hereby appoints Steven J. Renick, Los Angeles, member, Committee of Bar Examiners, replacing George Leal, San Francisco, effective immediately, for a term expiring at the conclusion 2011 State Bar Annual Meeting, or until further order of the Board, whichever occurs earlier.

All members present and recorded on the roll-call slip voted yes on the above matter.

6021 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Member Involvement Relations and Services, that the Board hereby appoints or reappoints, as the case may be, the following, members, Board of Directors of the California Bar Foundation, each for a two-year term commencing January 1, 2010, and expiring December 31, 2011, or until further order of the Board, whichever occurs earlier:

Reappointment:

Peter Boutin, San Francisco
Martha Gooding, Irvine
Bruce Iwasaki, Los Angeles
Mark Parnes, Palo Alto
Paul Tepper, Los Angeles
Theodore T. Ting, San Francisco
Douglas A. Winthrop, San Francisco

New Appointment:

Holly J. Fujie, Los Angeles
John C. Fossum, Newport Beach
Richard Tom, Rosemead
Caroline Christy Susman, San Francisco
Justin T. Miller, San Francisco
Thomas Silk, San Francisco

and it is

FURTHER RESOLVED, that the Board reappoints Lindsey L. Lee, San Francisco, member, Board of Directors of the California Bar Foundation, replacing Geoffrey Brown, resigned, for a term effective January 1, 2010, and expiring December 31, 2010, or until further order of the Board, whichever occurs earlier.

All members present and recorded on the roll-call slip voted yes on the above matter.

The Board may meet again at the call of the President at any time prior to the next regularly scheduled meeting of the Board, or, if no such meeting be called, at the State Bar offices, 180 Howard Street, San Francisco, CA 94105, on Saturday, January 9, 2010, at a time to be determined.