

AGENDA ITEM

MARCH 10 - Board of Trustees – November 20, 2015 Open Minutes

THE STATE BAR OF CALIFORNIA

OPEN MINUTES

BOARD OF TRUSTEES MEETING

SAN FRANCISCO, CALIFORNIA

November 20, 2015

The Board of Trustees of The State Bar of California convened in open session at 9:07 am at the State Bar of California, 180 Howard Street, Board Room, 4th Floor, San Francisco, California, Friday, November, 2015, David Pasternak presiding.

The following members of the Board of Trustees were present: Janet Brewer, Michael Colantuono, Glenda Corcoran, Terrance Flanigan, James Fox, Miriam Krinsky, Renée LaBran, Jason Lee, Dennis Mangers, Joanna Mendoza, Danette Meyers, Gwen Moore, Brandon Stallings, Todd Stevens and Hernán Vera.

The following members of staff were present: Laura Ernde, Kelli Evans, Dina Goldman, Francisco Gomez, Teri Greenman, Vanessa Holton, Elizabeth Parker and Leah Wilson.

Also present: Carmen Cave, Justice Mariano-Florentino Cuéllar, Justice Lee Edmon, Erin Joyce, Robin Brune, Roey Rahmil and Jennifer Wada.

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.

All members listed on the slip voted yes.

- 1 Special Presentation – Update on Rules Revision Commission by Hon. Lee Edmon, Presiding Justice, California Court of Appeal, Second Appellate District, Division 3.

As a follow up to her presentation before the Board's Regulation and Discipline Committee (RAD) on Thursday, November 19, Justice Lee Edmon briefed the Board on the scope of the Rules Revision Commission's work.

Justice Edmon explained that the Commission's charge was to consider all of the rules with a focus on retaining California's historical function of the rules as disciplinary standards and to avoid unnecessary rule comments or aspirational guidelines.

She continued, noting that the Commission's high level of deliberations arises from the quality of volunteers appointed to the Commission, including lawyers who are experts in legal ethics, seasoned practitioners, legal services lawyers, government lawyers and judges. As an example, she cited Commission member, Mark Tuft, who literally "wrote the book" on legal ethics and is a long-time coauthor of the Rutter Groups California Practice Guide on Attorney Professional Responsibility.

Justice Edmon stated that the rule revision process and intensive workload, meant to meet the March 2017 deadline, included regular two-day meetings that were augmented by multiple teleconferences of drafting teams in between regular meetings.

Justice Edmon noted the strong interest of stakeholders, many of whom have attended Commission meetings and have provided helpful oral and written input on key policies and substantive issues.

Justice Edmon thanked the Board of Trustees, the Board liaison and the Supreme Court liaison for their oversight and guidance. She noted that the liaisons neither purport to speak on behalf of the Board or the Court and that their personal observations and counsel has been, and will continue to be, invaluable.

Justice Edmon also presented agenda item #122 Proposed Amended Rules 5-110 and 5-220 of the Rules of Professional Conduct - Request to Release for Public Comment

Special Presentation and Discussion – Language Access by California Supreme Court Associate Justice Mariano-Florentino Cuéllar.

Justice Cuéllar, Chair, explained that the Language Access Plan Implementation Task Force is advising the Judicial Council on implementation of the recommendations contained in the Strategic Plan for Language Access in the California Courts, which was adopted by the council on January 22, 2015.

He stated that the Task Force included representatives of key stakeholders in the provision of language access services in the courts, including, but not limited to, judicial officers, court administrators, court interpreters, legal services providers, and community representatives. The Task Force's charge is to turn the Language Access Plan into a practical roadmap for full implementation in all 58 superior courts.

The Task Force must develop cost estimates for implementing the recommendations and phase in the plan based on resources available and adjust where necessary. Additionally, the task force must propose rules of court, forms, and Judicial Council-sponsored legislation for the council and its internal committees to consider; create and distribute work products (including bench guides, tool kits, and a pilot video-interpreting program); coordinate with advisory groups on implementation efforts where appropriate; and develop mechanisms to oversee and monitor the implementation of the plan.

Justice Cuellar said that the Task Force had asked for additional grants to fund the pilot program, and noted that while the Task Force had state-wide support, it still needed help in spreading the word, educating the communities about language access, and assuring them that the court is there to assist.

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

RESOLVED, that the minutes of the special meeting of the Board of Trustees held on Tuesday, July 7, 2015, by conference call, hereby are approved as written; and it is

FURTHER RESOLVED, that the minutes of the regular meeting of the Board of Trustees held on Friday, July 24, 2015, in Los Angeles, California are approved as written; and it is

FURTHER RESOLVED, that the minutes of the special meeting for the election of officers held on Friday, July 24, 2015, in Los Angeles, California are approved as amended to include public comment by Bridget Fogarty Gramme; and it is

FURTHER RESOLVED, that the minutes of the special meeting of the Board of Trustees held on Monday, September 21, 2015, in San Francisco, California are approved as written; and it is

FURTHER RESOLVED, that the minutes of the special meeting of the Board of Trustees held on Saturday, October 10, 2015, in Anaheim, California are approved as written; and it is

FURTHER RESOLVED, that the minutes of the special meeting of the Board of Trustees held on Sunday, October 11, 2015, in Anaheim, California are approved as written.

All members listed on the slip voted yes.

30 Mr. Pasternak reported that the first meeting of the 2015-16 Governance in the Public Interest Task Force was scheduled for December 9, 2015, in San Francisco. He advised that topics for the meeting would be identified closer the meeting date. Mr. Pasternak invited the Board to forward any discussion topics to Ms. Parker by December 4.

Mr. Pasternak called for public comment, inquiring as to whether there were persons in attendance who wished to comment on a particular item on the agenda. Erin Joyce (SEIU Attorney Unit Bargaining Team Member and Vice President, Los Angeles) and Robin Brune (SEIU Attorney Unit Vice President, San Francisco) presented comments on the possible reappointment of current Chief Trial Counsel Jayne Kim.

They expressed some concerns about pressures to process cases to meet backlog targets, the need for increased staffing levels, morale, and the Union's recent no-confidence vote in Ms. Kim. They asked the Executive Director and Board of Trustees to consider all sources of information before making a reappointment decision.

The Board thanked Ms. Joyce and Ms. Brune for their comments.

Carmen Cave, law student and intern at the Center for Public Interest Law (CPIL), requested that the minutes for the July 24, 2015 special meeting for the election of officers be amended to include her colleague Bridget Gramme's objection during the July 24, 2015 regular meeting of the board to the board's policy to cast written ballots followed by an announcement of the winners and that individual votes cast were available upon request. Ms. Gramme requested that the votes instead be read publicly.

The Board thanked Ms. Cave for her comments.

42 Ms. Parker introduced Roey Rahmil, California Young Lawyers Association (CYLA) board member. Mr. Rahmil thanked President Pasternak for the opportunity to present and on behalf of CYLA and congratulated the new officers and Trustees. Mr. Rahmil also thanked the Trustee liaisons, Glenda Corcoran and Brandon Stallings. Mr. Rahmil outlined the recent CYLA Activities, which he characterized as supporting the State Bar's mission to protect and serve the public.

Mr. Rahmil explained that CYLA this year launched a two-day Practical Skills Training program designed to provide new practitioners with career fundamentals. In addition, CYLA kicked off its "10 Minute Mentor Program," consisting of a series of 10 minute videos featuring leading attorneys in their area of practice. The videos are foundational in nature and designed to point attorneys towards resources within The State Bar.

Mr. Rahmil noted that CYLA sponsors joint events and programming with various groups, including the ABA, local bars, and the State Bar Sections. He said that CYLA has a presence throughout the state at the swearing in ceremonies and welcomes new attorneys with information about their automatic and free membership to CYLA. He also noted that CYLA publishes a bi-annual newsletter providing essential information to new attorneys and utilizes social media to reach its members and share information.

Mr. Rahmil stated that CYLA encourages early participation in pro bono through its annual Jack Berman award. He also noted that Trustee Stallings had met with CYLA during the Annual Meeting and expressed interest in supporting CYLA's increased involvement in legal services.

Ms. Parker introduced Kelli Evans, Senior Director, Administration of Justice, who reported on recent Univision television coverage of a town hall event in Santa Monica that featured State Bar materials on immigration / notario fraud.

Trustee Vera noted that many victims are afraid to reach out to the State Bar and asked if a broader approach had been considered to increase the numbers of UPL referrals. Ms. Evans said she has regular dialogues about this with the legal aid community and will carry the message back to the Office of Chief Trial Counsel.

Ms. Ernde of the office of Communications reported that videos and materials were available on the State Bar's website and that the State Bar also has a YouTube channel. Trustee LaBran recommended increasing the visibility of these materials and videos so that they are easier to find.

Ms. Parker introduced Ms. Wada, the State Bar's legislative advocate, who reported that while the Legislature was still on winter break, the State Bar's new leadership had been updating legislative staff on the implementation of the State Auditor's recommendations and public protection outreach.

Ms. Parker reported that the Bar Exam results would be available on the State Bar's website at 6:00 PM on Sunday November 22.

Mr. Parker advised that a Request for Proposal on Work Force Planning and Classification and Compensation had been issued. Additionally, she advised that there would likely be some staffing realignments and that she was looking to reduce expenditures wherever possible.

Ms. Parker advised that she and Chief Operating Officer Leah Wilson had met with the State Auditors who would be at the State Bar for the next several months. She said that they would review our internal controls and systems.

Ms. Parker said that she would be conducting a careful review of costs associated with implementing projects such as the recommendations of the Task Force on Admissions Regulation Reform (TFARR) to ensure that the agency does not incur expenditures that it cannot bear. She continued, advising that there could be tweaks to the recommendations and that she had spoken with TFARR Chair, Justice Jon Streeter, and would follow up with him in the Spring of 2016.

Regarding the January 2016 expiration of the Chief Trial Counsel's term, Ms. Parker said that she was carefully reviewing all recommendations and comment. She said that she would bring her nomination to the Board in the near future.

Ms. Parker introduced General Counsel Vanessa Holton who reported that the Office of General Counsel had held a California Public Records Act (CPRA) training session in San Francisco. The session was recorded, so a webinar might follow. The CPRA must be implemented for the State Bar by January 1, 2016.

Ms. Holton advised that the Office of General Counsel would be providing Bagley-Keene compliance training to the State Bar Sections on January 15.

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.

54-131 RESOLVED, that the Board of Trustees hereby delegates to staff the function of making the annual recommendation to the California Supreme Court that eligible suspensions that meet the criteria for expungement set forth in California Rule of Court 9.6 be expunged; and it is

FURTHER RESOLVED, that, upon the Court's order of expungement, staff is directed to immediately expunge the suspensions from the membership records and notify each member of the Court's order and the expungement.

54-141 Financial Statement for the Quarter Ended September 30, 2015

RESOLVED, that upon the recommendation of the Planning and Budget Committee, the Board hereby receives the financial statement in the form this day before the Board, for the quarter ended September 30, 2015, as certified by the Finance Director, and on file in the San Francisco office of the State Bar.

Investment Report for the Quarter Ended September 30, 2015

RESOLVED, that upon the recommendation of the Planning and Budget Committee, the Board hereby receives the investment report in the form this day before the Board, for the quarter ended September 30, 2015, as certified by the Finance Director, and on file in the San Francisco office of the State Bar.

Client Security Fund Report for the Quarter Ended September 30, 2015

RESOLVED, that upon the recommendation of the Planning and Budget Committee, the Board hereby receives the Client Security Fund report in the form this day before the Board, for the quarter ended September 30, 2015, as certified by the Finance Director, and on file in the San Francisco office of the State Bar.

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

RESOLVED, that the Board of Trustees hereby amends Title 6, Division 2, Chapters 1 and 2 of the Rules of the State Bar, containing Rules 6.50-6.56 and 6.60 – 6.65, in the form attached hereto.

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

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

RESOLVED, that the Board of Trustees hereby adopts the Implementing Procedures For Board Of Trustee Compliance With The Bagley-Keene Open Meeting Act, in the form attached hereto.

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

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

RESOLVED, the Board of Trustees approves the change of status of the part-time Review judge position to full-time status in accordance with the governing Rules and Regulations Pertaining to State Bar Court Judge Service and other governing State Bar personnel standards, effective November 1, 2016; and it is

FURTHER RESOLVED, the Board of Trustees directs staff to forward notice of this action to the Supreme Court for its consideration.

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

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

RESOLVED, that the Board of Trustees authorize the immediate release of proposed amended Rules 5-110 and 5-220 of the Rules of Professional Conduct for public comment for a period of 90 days; and it is

FURTHER RESOLVED, that this authorization for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposal.

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

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

RESOLVED, that the Board of Trustees authorize the immediate release of proposed amended Rules 5-110 and 5-220 of the Rules of Professional Conduct, attached hereto as Attachment A, for public comment for a period of 90 days; and it is

FURTHER RESOLVED, that this authorization for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposal.

All members present and recorded on the roll-call slip voted yes with the exception of Danette Meyers, Gwen Moore and Brandon Stallings.

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

RESOLVED, that the Board of Trustees adopts the following amendment to the Charter of the Regulation and Discipline Committee and directs staff to update the Board Book accordingly:

CHARTER FOR REGULATION AND DISCIPLINE COMMITTEE

The Regulation and Discipline Committee is a performance-monitoring committee without planning responsibilities. It is accountable for monitoring the operational and financial performance of the State Bar's Regulation and Discipline functions such as monitoring the work of the Client Security Fund Administration, the State Bar Court, Discipline Enforcement, and Mandatory Fee Arbitration. The Regulation and Discipline Committee is accountable for the following functions in the area of Regulation and Discipline:

- Establish the key elements of a programmatic and financial reporting process, including the content, format, and frequency of performance reports to the Board, and overseeing implementation of the process.
- Oversee (as provided by statute: Bus. & Prof. Section 6079.5), the work of the Chief Trial Counsel, who reports to and serves under this Board committee.

- **Approve any material changes to policy-level quality-control measures that apply to the Office of Chief Trial Counsel, the Client Security Fund, or the Office of Probation.**
- Review performance reports in committee meetings and report program and financial performance to the full Board.
- Identify needed corrective actions in ongoing programs and functions that do not require revision in approved program and functional goals or changes in the approved budget, and overseeing the implementation of such actions.
- Oversee the development and implementation of State Bar operational policies as needed to guide programs and functions dealing with Regulation and Discipline, so long as these policies do not alter approved goals or result in changes in the adopted budget.
- Oversee the preparation of in-depth assessments of program/function effectiveness for presentation at the annual strategic work session.
- Present an overall assessment of the past year's fiscal and program performance at the annual strategic work session.
- Review internal and external audit reports as they relate to the Regulation and Discipline functions of the Bar and overseeing corrective actions.

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

132 *WITHDRAWN*

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

RESOLVED, that the Board of Trustees hereby adopts an amendment to the Schedule of Charges and Deadlines setting a charge of 10 cents per page for copies and scanning related to compliance with the California Public Records Act.

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

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

RESOLVED, that the Board of Trustees approve the proposed amendment to the Board Book's appointment policy as follows (additions underlined):

Tab 15, Article 4, Section 2, Page 15

The exceptions to this policy are section executive and Mandatory Fee Arbitration committee members who serve as an officer in a fourth year, or as Chair, Vice-Chair or Chair-elect in a fifth year, or as Chair, in a sixth year; the Committee of Bar Examiners, the California Board of Legal Specialization and its Advisory Commissions, the LAP Oversight Committee and the Committee on State Bar Approved Professional Liability Insurance, whose members serve four-year terms, and the Continuing Education of the Bar (CEB) Governing Committee, whose members serve two-year terms, and the California Commission on Access to Justice and the Legal Services Trust Fund Commission, whose members may serve two consecutive three-year terms and whose officers may serve one or two additional one-year terms. Officers are appointed by the Board of Trustees and serve one-year terms

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

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

RESOLVED, that the Board of Trustees approves the following Section legislative proposals: BLS-2016-01, BLS-2016-02, T&E-2016-03, T&E-2016-04, T&E-2016-05, T&E-2016-06, T&E-2016-07, and T&E-2016-08.

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

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

RESOLVED, to proceed with the selection of the District 1 appointee.

All members present and recorded on the roll-call slip voted yes with the exception of Janet Brewer, Michael Colantuono, Glenda Corcoran, Terry Flanigan, Miriam Krinsky, Dennis Mangers and Joanna Mendoza. Mr. Pasternak abstained.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, to vote on the following candidates for District 1:

Doug Saeltzer; Sean SeLegue; Kimberly Toney Williams; and Terry Wiley.

Ms. Brewer, Mr. Colantuono, Ms. Corcoran, Mr. Mangers, Ms. Mendoza and Mr. Stevens voted for **Sean SeLegue**.

Mr. Flanigan, Mr. Fox, Ms. Krinsky, Ms. LaBran, Mr. Lee, Ms. Meyers, Ms. Moore, Mr. Stallings and Mr. Vera voted for **Terry Wiley**.

Mr. Pasternak abstained.

Mr. Pasternak announced Terry Wiley as the District 1 appointee.

702 Ms. Parker provided comments on this item during her Executive Director's report. No action was taken.

The Board went into closed session at 1:04 pm and considered the appointments and the action taken is reported below.

6000 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.

RESOLVED, that the Board of Trustees hereby reappoints the fee arbitrators whose names appear on the list attached hereto as Attachment A to the State Bar Mandatory Fee Arbitration Department; each for a one-year term commencing January 1, 2016, and expiring December 31, 2016 and it is

FURTHER RESOLVED, that the Board of Trustees appoints the applicants whose names appear on the list below to the State Bar Mandatory Fee Arbitration Department, each for a term commencing November 20, 2015, and expiring December 31, 2016;

Name	County	Bar Number
Chokshi, Komal	San Francisco	234348
De Langis, Mark	Marin	190083
Ehrlich, Rachel	Alameda	184224
Lai, Edward	Alameda	147830
Leoni, Teresa	Contra Costa	246020
Peters, Dorian	Contra Costa	261863
Rubalcava, Michelle	Sacramento	229947
Stout, Cameron	Santa Clara	117373
Sullivan, Kevin	San Francisco	230589
Szucsko, Terry	San Francisco	258096
Van Egmond, Colleen	Stanislaus	242220
Adler, Hans	Marin	Lay
Coffin, Dana	San Mateo	Lay
Connell, Joseph	Alameda	Lay
Goldfield, Eva-Lynn	Ventura	Lay
Isi, Tora	Marin	Lay
Kassouf, Janet K.	Alameda	Lay
Kiers, J. Peter	Marin	Lay
Tanamoto, Geri	Alameda	Lay

and it is

FURTHER RESOLVED, that the Board of Trustees reappoints Kenneth E. Bacon, Sacramento, as the State Bar's Presiding Arbitrator effective January 1, 2016 and expiring December 31, 2016.

6012 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees approve appointment of Eric R. Deitz, San Diego, to the Committee on Professional Responsibility and Conduct for a term commencing immediately and expiring October 2, 2016.

6013 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees approve appointment of Catherine J. Blakemore, Sacramento, as Vice Chair, California Commission on Access to Justice, for a term commencing January 1, 2016, and expiring December 31, 2016, or until further order of the board, whichever occurs earlier.

6014 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees approve the appointment of Joe Ayala, Sacramento, to the California Indian Legal Services Board of Directors for three-year term commencing on December 5, 2015 and expiring December 5, 2018, or until further order of the Board, whichever occurs earlier.

6015 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees approve the appointment of Jillayne A. Van, Irvine, to the Legal Aid Society of Orange County Board of Directors for a three-term years commencing on November 30, 2015 and expiring December 1, 2018 or until further order of the Board, whichever occurs earlier; and it is

FURTHER RESOLVED, that the Board of Trustees approve reappointment of Roman E. Darmer, Irvine, to the Legal Aid Society of Orange County Board of Directors for a three-year term commencing on November 30, 2015 and expiring on December 1, 2018 or until further order of the Board, whichever occurs earlier.

6016 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees approve the appointment of James Wright, Yolo; Amelia Burroughs, Redwood; and Cheryl Carl, Mother Lode, to Legal Services of Northern California Board of Directors for a three-year term commencing on November 30, 2015 and expiring September 1, 2018, or until further order of the Board, whichever occurs earlier; and it is

FURTHER RESOLVED, that the Board of Trustees approve reappointment of John Davis, Treasurer, Sacramento, officer, Board of Directors of Legal Services of Northern California, for a three-year term, continuing and expiring on May 22, 2019, or until further order of the Board, whichever occurs earlier; and it is

FURTHER RESOLVED, that the Board of Trustees approve reappointment of the following three State Bar appointed members: Timothy Brisson, Placer, Richard Sims, Sacramento, and Thomas Andrews, Shasta, members, Board of Directors of Legal Services of Northern California, each for a three-year term, commencing May 1, 2015 and expiring April 30, 2018, or until further order of the Board, whichever occurs earlier.

The Board returned to open session and adjourned its meeting at 2:59 pm.

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, 845 S. Figueroa Street, Board Room, 2nd Floor, Los Angeles, CA 90017, on Friday, March 11, 2016, at a time to be determined.