

ATTACHMENT A

Board Book Phase II – Policy Review [Bagley-Keene and California Public Records Act]

TAB 2.2

ELECTION AND APPOINTMENT OF THE BOARD OF TRUSTEES

Article 3 ELECTED ATTORNEY MEMBERS AND TERMS

Section 5 *Election Policies and Procedures*

Statutes and Rules

§6018. Nominations; Qualifications to Vote

Nominations of elected members of the board shall be by petition signed by at least 20 persons entitled to vote for such nominees.

Only active members of the State Bar maintaining their principal offices for the practice of the law in the respective State Bar districts shall be entitled to vote for the member or members of the board therefrom. (Origin: State Bar Act, §15. Added by Stats. 1939, ch. 34. Amended by Stats. 2011, ch. 417, § 23.)

§6019. Elections

Each place upon the board for which a member is to be elected or appointed shall for the purposes of the election be deemed a separate office.

If only one member seeks election to an office, the member is deemed elected. If two or more members seek election to the same office, the election shall be by ballot. The ballots shall be distributed to those entitled to vote at least twenty days prior to the date of canvassing the ballots and shall be returned to a site or sites designated by the State Bar, where they shall be canvassed at least five days prior to the ensuing annual meeting. At the annual meeting, the count shall be certified and the result officially declared.

In all other respects the elections shall be as the board may by rule direct. (Origin: State Bar Act, §15. Added by Stats. 1939, ch. 34. Amended by Stats. 1981, ch. 836; Stats. 2002, ch. 415, effective September 9, 2002; Stats. 2011, ch. 417, § 24.)

Historical Note

The State Bar rules governing the nomination, eligibility and election procedures of attorney members to the Board of Trustees were previously set forth in Article II of the Rules and Regulations of the State Bar of California. Article II of the Rules and Regulations of the State Bar of California was repealed and superseded by the Board of

Trustees on May 16, 2008 and replaced in its entirety by Title 6, Division 1, Chapter 1 of the new Rules of the State Bar, effective January 1, 2009.

SEE: State Bar Web Page: Attorney Resources>Rules of the State Bar of California>Title 6 Governance>Division 1 Board of Trustees:

State Bar Rules 6.1-6.8 (Election of Trustees)
State Bar Rules 6.30-6.31 (State Bar Districts).

Computation Of Deadlines

The date for performing an act required by these rules is computed by excluding the first day and including the last, unless the State Bar is closed the last day. The State Bar is closed on Saturdays, Sundays and legal holidays.

(Source: State Bar Rule 1.23 adopted effective July 20, 2007.)

Historical Note

This rule supersedes Article II, §1 of the Rules and Regulations of the State Bar of California (Computation of Deadlines), Board of Governors' Resolution July 27, 2001; repealed July 20, 2007.

Election Matters in General

- (A) Subject to the supervision and control of the board, the Secretary is responsible for administration and supervision of the election of attorney members of the board. These duties include
- (1) preparing and distributing election forms and ballots;
 - (2) preparing and distributing eligibility and voting lists;
 - (3) determining validity of nominations;
 - (4) counting ballots;
 - (5) appointing canvassing boards and recount committees; and
 - (6) maintaining custody and control of election materials.
- (B) A Nominating Petition, Candidate Statement, or any other form required by rule in this division must be completed in accordance with instructions and filed by the dates set forth in the Schedule of Charges and Deadlines.
- (C) A member's address as it appears in his or her member record will be considered the principal office for the practice of law in determining eligibility for candidacy and voting. If the address appearing on a candidate's member record is a postal or private mailbox, the candidate must also provide the Secretary with the street address of his or her principal office on or before the date set for filing of Nominating Petitions. A candidate must also certify on the Nominating Petition that his or her principal office for the practice of law is maintained in the district from which he or she is running.

(Source: State Bar Rule 6.1 adopted May 16, 2008, effective January 1, 2009; amended effective November 14, 2009.)

Historical Note

This rule supersedes

- a) Article II, §2 of the Rules and Regulations of the State Bar of California of the State Bar of California (Nominating Petitions for Governors), amended September 10, 1971; January 26, 2001; July 27, 2001; January 23, 2003; repealed May 16, 2008;
- b) Article II, §3 of the Rules and Regulations of the State Bar of California (Date of Filing Nominating Petitions), amended September 10, 1971; December 20, 1978; December 4, 1975; May 13, 1976; March 21, 1997; July 27, 2001; January 23, 2003; November 17, 2006; repealed May 16, 2008;
- c) Article II, §4 of the Rules and Regulations of the State Bar of California (Determination of Sufficiency of Nominating Petitions), amended May 13, 1976, renumbered July 27, 2001; amended January 23, 2003; November 17, 2006; repealed May 16, 2008;
- d) Article II, §5 of the Rules and Regulations of the State Bar of California (Retention of and Public Access to Nominating Petitions), added November 17, 2006; repealed May 16, 2008
- e) Article II, §7 of the Rules and Regulations of the State Bar of California (Preparation of Eligibility List), amended August 5, 1971; December 4, 1975; January 25, 1986; February 21, 1986; January 24, 1987; July 27, 2001; January 23, 2003; renumbered November 17, 2006; repealed May 16, 2008;
- f) Article II, §8 of the Rules and Regulations of the State Bar of California (Mailing of Ballots), amended August 5, 1971; December 4, 1975; July 27, 2001; January 23, 2003; renumbered November 17, 2006; repealed May 16, 2008; and
- g) Article II, §13 of the Rules and Regulations of the State Bar of California (Canvassing of Ballots), amended December 4, 1975; January 25, 1986; February 21, 1986; March 21, 1997; July 27, 2001; January 23, 2003; renumbered November 17, 2006; repealed May 16, 2008.

Nomination of trustees

- (A) A qualified member must petition for candidacy by filing a completed Nominating Petition. The Nominating Petition may be filed electronically. Candidates who file electronically must retain the original copy of the petition for four years and produce it to the State Bar upon request.
- (B) The Secretary may extend the deadline for filing a Nominating Petition up to ten working days if
 - (1) no valid Nominating Petition has been filed;
 - (2) the only valid Nominating Petition filed is withdrawn before the deadline in the Schedule of Charges and Deadlines; or
 - (3) only one candidate has filed a valid Nominating Petition and has died or become ineligible.

(Source: State Bar Rule 6.2 adopted May 16, 2008, effective January 1, 2009; amended November 4, 2011, effective January 1, 2012.)

Historical Note

This rule supersedes

- a) Article II, §2 of the Rules and Regulations of the State Bar of California (Nominating Petitions for Governors), amended September 10, 1971; January 26, 2001; July 27, 2001; January 23, 2003; repealed May 16, 2008;
- b) Article II, §3 of the Rules and Regulations of the State Bar of California (Date of Filing Nominating Petitions), amended September 10, 1971; December 20, 1978; December 4, 1975; May 13, 1976; March 21, 1997; July 27, 2001; January 23, 2003; November 17, 2006; repealed May 16, 2008; and
- c) Article II, §6 of the Rules and Regulations of the State Bar of California (Designation of Separate Offices) amended September 10, 1971; December 4, 1975; renumbered July 27, 2001; amended January 23, 2003; repealed May 16, 2008.

Candidate information

- (A) The State Bar will post on its Web site and include in the ballot package mailed to eligible voters biographic information about qualified candidates including education, date admitted to practice, any public record of discipline, and other information in the official membership records of the State Bar.
- (B) Candidates may file a Candidate Statement that describes their views and qualifications for office.
- (C) A candidate for the Board of Trustees must disclose his or her membership in a club that discriminates in its membership policies on the basis of race, color, creed, national ancestry, sex, or sexual preference, but is not required to disclose the name of the particular club.

(Source: State Bar Rule 6.3 adopted May 16, 2008, effective January 1, 2009; amended November 4, 2011, effective January 1, 2012.)

Historical Note

This rule supersedes Article II, §9 of the Rules and Regulations of the State Bar of California (Candidate Statements), Board of Governors' Resolution, March 1970; amended April 1970; December 4, 1975; September 14, 1989; March 21, 1997; January 26, 2001; July 27, 2001; January 23, 2003; amended and renumbered November 17, 2006; repealed May 16, 2008.

Ballots

- (A) The ballot, any Candidate Statement, and a return envelope must be mailed to the address of record of eligible members at least six weeks before the date specified in the Schedule of Charges and Deadlines.
- (B) To be counted, a ballot must be returned in the envelope provided by the State Bar and received in the manner and time designated in the Schedule of Charges and Deadlines. The outside of the return envelope must include the voting member's printed name and address and must be signed by the member. Alternatively, the Secretary may provide for electronic voting using a secure means that complies with the requirements of these rules.

(Source: State Bar Rule 6.4 adopted May 16, 2008, effective January 1, 2009.)

Historical Note

This rule supersedes

- (a) Article II, §8 of the Rules and Regulations of the State Bar of California (Mailing of Ballots), amended August 5, 1971; December 4, 1975; July 27, 2001; January 23, 2003; renumbered November 17, 2006; repealed May 16, 2008;
- (b) Article II, §10 of the Rules and Regulations of the State Bar of California (Voting of Ballots), renumbered and amended March 21, 1997; July 27, 2001; January 23, 2003; amended and renumbered November 17, 2006; repealed May 16, 2008;
- (c) Article II, §11 of the Rules and Regulations of the State Bar of California (Electronic Voting), Board of Governors' Resolution, January 23, 2003; amended and renumbered November 17, 2006; repealed May 16, 2008; and
- (d) Article II, §12 of the Rules and Regulations of the State Bar of California (Checking and Custody of Ballots), amended June 22, 1974; December 4, 1975; June 24, 1976; March 1, 1977; March 10, 1978; January 25, 1986; February 21, 1986; March 21, 1997; July 27, 2001; January 23, 2003; renumbered November 17, 2006; repealed May 16, 2008.

Plurality of votes; tie votes

Votes will be counted as prescribed by law. The candidate who receives a plurality of the votes cast for an office will be elected a trustee of the State Bar. In the event of a tie, the election will be determined by lot. The affected candidates must be notified and may attend the drawing of the lot.

(Source: State Bar Rule 6.5 adopted May 16, 2008, effective January 1, 2009, amended effective January 1, 2012.)

Historical Note

This rule supersedes Article II, §14 of the Rules and Regulations of the State Bar of California (Plurality of Votes; Provision for Ties), renumbered July 27, 2001; renumbered November 17, 2006; repealed May 16, 2008.

Recounts

- (A) No later than five days after certification of election results, a candidate may request a recount. The request must be in the manner prescribed by the Secretary and include advance payment of reasonable fees for the cost of the recount. Members of the State Bar may attend a recount, subject to reasonable conditions imposed by the Secretary.
- (B) As soon as practicable, the Secretary must appoint a recount committee consisting of five active members who do not initially count ballots. The recount committee must
 - (1) recount the ballots;
 - (2) examine the ballots not counted;
 - (3) determine the number of votes validly cast for each candidate in the election; and
 - (4) immediately report the results, which will be final, to the Secretary.

(Source: State Bar Rule 6.6 adopted May 16, 2008, effective January 1, 2009.)

Historical Note

This rule supersedes Article II, §15 of the Rules and Regulations of the State Bar of California (Recounts), Board of Governors' Resolution, January 23, 2003; amended and renumbered November 17, 2006; repealed May 16, 2008.

Appointment due to a vacancy

- (A) A vacancy on the board occurs when a board member dies, resigns, or ceases to be an active member of the State Bar. The board must fill a vacancy by appointment unless these rules provide otherwise.
- (B) If a winning candidate dies or becomes ineligible or unable to serve before taking office, the office must go to the candidate receiving the next-highest number of votes for that office. If there is no other candidate, the board must appoint a member to fill the vacancy until the next regularly scheduled election.

(Source: State Bar Rule 6.7 adopted May 16, 2008, effective January 1, 2009.)

Historical Note

This rule supersedes

- a) Article IIIA, §1 of the Rules and Regulations of the State Bar of California (Vacancy – What Constitutes), Board of Governors' Resolution, September 21, 1967; repealed May 16, 2008;
- b) Article IIA, §2 of the Rules and Regulations of the State Bar of California (Appointment – Generally), Board of Governors' Resolution, September 21, 1967; repealed May 16, 2008; and
- c) Article II, §3 of the Rules and Regulations of the State Bar of California (Date of Filing Nominating Petition), amended September 10, 1971; December 20, 1974; December 4, 1975; May 13, 1976; March 21, 1997; July 27, 2001; January 23, 2003; November 17, 2006; repealed May 16, 2008.

Special election due to a vacancy

- (A) If a vacancy leaves an unexpired term exceeding eighteen months, a special election must be held to fill the balance of the term. This special election must be held in conjunction with the next regularly scheduled Board of Trustees election.
- (B) The rules and procedures applicable to a regular election apply to a special election.

(Source: State Bar Rule 6.8 adopted May 16, 2008, effective January 1, 2009; amended November 4, 2011, effective January 1, 2012.)

Historical Note

This rule supersedes

- (a) Article IIA, §3 of the Rules and Regulations of the State Bar of California (Appointment – Limited Duration), amended January 16, 1969; December 4, 1975; January 23, 2003; repealed May 16, 2008;

- (b) Article IIA, §4 of the Rules and Regulations of the State Bar of California (Special Elections – Generally), Board of Governors’ Resolution, May 24, 1968; amended December 4, 1975; repealed May 16, 2008;
- (c) Article IIA, §5 of the Rules and Regulations of the State Bar of California (Special Elections – Common Disasters to the Board), amended January 16, 1969; repealed May 16, 2008; and
- (d) Article IIA, §6 of the Rules and Regulations of the State Bar of California (Term of Office – Commencement and Expiration), amended October 24, 1968; December 4, 1975; repealed May 16, 2008.

Retention of and Public Access to Nominating Petitions

After being filed, each nominating petition must be held by the secretary, or the secretary’s designee, for four years following commencement of the term of office for which the petition is filed.

~~Public access to the nominating petitions will be limited to viewing the petitions only, at the San Francisco office of the State Bar. The public may not copy or distribute copies of the petitions.¹~~

(Source: Board of Governors’ Resolution, November 17, 2006.)

Section 6 Disclosure of Petitioners

The names of persons who secure petitions to run for the Board of Trustees shall be public.

(Source: Board of Governors’ Resolution, December 1980.)

¹ PHASE II PROPOSED CHANGE: Recommend deletion to be consistent with the California Public Records Act.

TAB 2.5

MEETINGS OF THE BOARD OF TRUSTEES

Article 1 MEETINGS OF THE BOARD

Section 2 Implementing Procedures For Board of Trustee Compliance With the Bagley-Keene Open Meeting Act

In 2015, Senate Bill No. 387, approved by the Governor and chaptered by the Secretary of State on October 6, 2015, at Chapter 537, Statutes of 2015, ("SB 387") was passed and makes the State Bar subject to all requirements of Bagley-Keene commencing April 1, 2016. SB 387 retains the grounds for closed sessions permitted by Business and Professions Code section 6026.5 and these provisions, pursuant to Bagley-Keene, are applicable to all committees of the Board and the State Bar. On November 20, 2015, the Board of Trustees adopted rule 6.57 which repeals rules 6.50-6.56 (which previously contained the Bar's open meeting requirements) effective April 1, 2016:

Rule 6.57. Repeal.

This chapter shall remain in effect only until April 1, 2016, and as of that date is repealed. Beginning April 1, 2016, meetings of the Board of Trustees and its committees will be subject to the Bagley-Keene Open Meeting Act, as required by Business and Professions Code section 6026.7, and Business and Professions Code section 6026.5.

(Source: Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California: August 17, 1985, October 1, 1985, July 26, 2003; November 2007; repealed May 16, 2008; Rules of the State Bar of California, Title 6, Division 2, Chapter 1 (Meetings of the Board of Trustees) (Rules 6.50-6.57): May 16, 2008; repealed April 1, 2016; Board of Trustees Resolution November 20, 2015.)

Historical Note

Repealed Rule 6.50 (adopted effective May 16, 2008; amended effective July 22, 2011; amended effective January 1, 2012; amended effective April 25, 2013.) supersedes

- a) Article IV, § 2 of the Rules and Regulations of the State Bar of California (Time and Place of Meetings); repealed May 16, 2008;
- b) Article IV, § 4 of the Rules and Regulations of the State Bar of California (Annual Organization Meeting), formerly Section 5; renumber Section 4, effective July 26, 2003; repealed May 16, 2008;
- c) Article IV, § 5 of the Rules and Regulations of the State Bar of California (Authority to call Special Meetings), formerly Section 6; renumbered Section 5 and amended effective July 26, 2003; repealed May 16, 2008;
- d) Article IV, § 7 of the Rules and Regulations of the State Bar of California (Quorum); repealed May 16, 2008; and

- e) Article 1, § 4(b)(6) of the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California (Meeting, Definition), Board of Governors' Resolution, August 17, 1985; October 1, 1985; July 26, 2003; November 2008; repealed May 16, 2008.

Repealed rule 6.51 (adopted effective May 16, 2008; amended effective July 22, 2011; amended effective April 25, 2013.) supersedes

- a) Article IV, § 3 of the Rules and Regulations of the State Bar of California (Emergency Meetings), amended effective June 10, 2000; repealed May 16, 2008;
- b) Article 2, § 1(c) of the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California (Meetings to be Open and Public; Attendance); Board of Governors Resolutions August 17, 1985; July 26, 2003; March 2007; repealed May 16, 2008;
- c) Article 2, § 2(a) of the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California (Notice of Meetings; Inclusion of Agenda; Time; Request for Notice and Renewal; Annual Charge for Sending); Board of Governors Resolutions August 17, 1985; August 2000: Governance Principle 4.3; July 26, 2003; March 2007; repealed May 16, 2008;
- d) Article 4, § 1 of the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California (Policy); repealed May 16, 2008; and
- e) Article 4, § 2 of the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California (Late Added Items; Unnoticed Meetings), amended June 10, 2000; March 2007; repealed May 16, 2008.

Repealed rule 6.52 (adopted effective July 22, 2011; amended effective October 13, 2012)

Repealed rule 6.53 (adopted effective July 22, 2011)

Repealed rule 6.54 (adopted as Rule 6.52 effective May 16, 2008; renumbered as Rule 6.54 and amended effective July 22, 2011; amended effective January 1, 2012; amended effective January 1, 2014) supersedes

- a) Article IV, § 1 of the Rules and Regulations of the State Bar of California (Open Meetings; Public Attendance); repealed May 16, 2008;
- b) Article 2, § 1 of the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California (Meetings to be Open and Public; Attendance); Board of Governors' Resolutions August 17, 1985; July 26, 2003; March 2007; repealed May 16, 2008; and
- c) Article 2, § 4 of the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California (Disorderly Conduct During Meeting; Clearing of Room); repealed May 16, 2008.

Repealed rule 6.55 (adopted as Rule 6.53 effective May 16, 2008; renumbered as Rule 6.55 and amended effective July 22, 2011; amended effective January 1, 2012; amended effective April 25, 2013) rule supersedes

- a) Article 2, § 2(b) of the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California (Notice of Meetings; Inclusion of Agenda; Time; Request for Notice and Renewal; Annual Charge for Sending); repealed May 16, 2008; and
- b) Article 3 of the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California (Closed or Executive Sessions of the Board), repealed May 16, 2008.

Repealed rule 6.56 (adopted as Rule 6.54 effective May 16, 2008; renumbered as Rule 6.56 and amended effective July 22, 2011) supersedes Article 5 of the Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors of the State Bar of California (Board Records), repealed May 16, 2008.

To facilitate compliance with the Bagley-Keene Open Meeting Act (“Bagley-Keene”), as required by Business and Professions Code section 6026.7, the Board of Trustees adopts the following implementation procedures.

(A) Schedule for Board of Trustee Meetings

- (1) Regular meetings of the Board of Trustees and board committees are calendared by board resolution.
- (2) Between regular meetings, special meetings may be called by the President, a Committee Chair, or by a majority of the board or a board committee. Unless the meeting meets the criteria under Bagley-Keene at Government Code section 11125.4(a) for shortened notice, meetings must be called with 10 days’ notice.
- (3) Meetings of the board and board committees must be held at the State Bar offices in San Francisco or Los Angeles, unless a majority of the board votes to meet elsewhere in California.

(B) Notice of Board of Trustee Meetings

- (1) Notice of ~~regular and special~~ meetings of the board and board committees must be posted on the State Bar’s website no fewer than 10 days before the meeting, unless the meeting meets the criteria under Bagley-Keene at Government Code section 11125.4(a) for shortened notice as a special ~~or emergency~~ meeting or Government Code section 11125.5(a) for shortened notice as an emergency meeting.²
- (2) Interested persons may subscribe to receive notice of board and board committee meetings by e-mail or first class mail.

² PHASE II PROPOSED CHANGE: Recommend amendment to be consistent with Bagley-Keene.

- (3) The notice of meeting will include the name, address and phone number of any person who can provide further information prior to a noticed meeting, and the address of the website where notices regarding board and board committee meetings are posted.
- (4) Notice of meetings will include a specific agenda for the meeting, including a brief description of the items of business to be discussed or transacted in either open or closed session.
- (5) Items may not be added to an agenda after the ten-day notice period ~~unless there is a need for immediate action and the need for action came to the attention of the board or board committee after notice of the agenda was posted in accordance with the 10-day notice requirement~~ except as provided under Government Code section 11125.3, a) upon a determination by a majority vote of the board or board committee that an emergency situation exists, as defined in Government Code section 11125.5; or b) upon a determination by the board or board committee by a two-thirds vote, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there exists a need to take immediate action and that the need for action came to the attention of the board or board committee after notice of the agenda was posted in accordance with the 10 day notice requirement. In this situation, ~~the board or board committee must make a finding of the need for action by a two-thirds vote or a unanimous vote if two-thirds of the members are not present, before it may consider the item.~~ Notice ~~notice~~ of the late items must be posted at least 48 hours before the meeting.³
- (6) Agendas and other writings distributed to all or a majority of the board or a board committee ~~are public records and~~ shall be made available upon request, except as provided under Government Code section 11125.1(a).⁴ Writings distributed to members of the board or a board committee prior to or at a meeting will be available at the meeting. If these writings are prepared by someone other than the State Bar, they will be available as soon as feasible after the meeting.

(C) Committee Meetings

- (1) A majority of board members may attend an open and noticed board committee meeting of which they are not a member only as observers. Board members who are not members of the board committee may not participate in the committee discussion and may not sit at the table with the committee members.
- (2) If during the course of a regularly scheduled and noticed board meeting, the board desires to have a committee discuss an item of business on the agenda, the committee may do so provided that:

³ PHASE II PROPOSED CHANGE: Recommend amendment to be consistent with Bagley-Keene.

⁴ PHASE II PROPOSED CHANGE: Recommend amendment to be consistent with Bagley-Keene and the California Public Records Act.

- (a) the specific time and place of the committee meeting is announced during the public board meeting, and
- (b) the committee meeting is conducted within a reasonable time of, and nearby, the meeting of the board.

(D) Teleconference Meetings

- (1) Board and board committee meetings may be held by teleconference in compliance with the requirements of Bagley-Keene. Each teleconference meeting location, including those from where a member of the board will be calling in, must be identified in the notice and agenda and to be open to the public.
- (2) For teleconference meetings, a number shall be provided to allow members of the public to call in to the meeting. Witnesses, guest speakers, and staff may participate in a teleconference meeting by calling the number available to the public.
- (3) Access to teleconference meetings shall also be provided by providing space at the San Francisco and Los Angeles offices of the State Bar for the public to listen to the teleconference. These locations will be formally noticed as teleconference sites.
- (4) Votes taken during a teleconference must be by roll call.

(E) Minutes and Records of Voting

- (1) The Secretary or his or her designee shall maintain minutes of topics discussed and decisions made at board meetings. These minutes must include a record of the vote or abstention of each member present for each action item. Closed session minutes are confidential.
- (2) Final minutes of open meetings approved by the Board of Trustees will be posted on the State Bar's website in an easily accessible area.

(F) Closed Sessions

- (1) Closed sessions of the board and board committees may be held to discuss applicable topics allowed under Bagley-Keene at Government Code section 11126 and Business and Professions Code section 6026.5.
- (2) The agenda for a closed meeting must include a citation to the specific provisions of Bagley-Keene or Business and Professions Code section 6026.5 which allow the closed session.
- (3) Prior to going into closed session, the President, Committee Chair or other presiding Trustee must disclose the general nature of the items to be discussed and the citation to the specific provisions of Bagley-Keene or Business and Professions Code section 6026.5 which allow the closed session.

(4) The board or a board committee is required to designate a staff person to attend the closed session and to record in a minute book a record of topics discussed and decisions made. The minutes of a closed session is available only to the State Bar, or if a violation of the open meeting requirements is alleged, to a court of general jurisdiction. However, the board must convene in open session after a closed session and publicly report at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee made in the closed session of the board.

(G) Public Comment

- (1) Members of the public must be provided with an opportunity to directly address the board or board committee on each agenda item, either prior to or during the discussion of that item.
- (2) Any person attending a board or board committee meeting has the right to record the proceedings unless the board or board committee reasonably finds that the recording cannot be made without a persistent disruption of the proceedings.
- (3) No person attending a meeting shall be required, as a condition of attendance, to register his or her name, complete a questionnaire, or otherwise perform any condition precedent to his or her attendance.

(Source: Board of Trustees Resolution November 20, 2015.)

TAB 2.6

BOARD COMMITTEES AND TASK FORCES

Article 1 GENERAL

Section 3 *Appointment and Composition of Board Committees*

- (a) Each standing committee shall have no fewer than five (5) members. The president-elect presents and proposes committee chairs, liaisons, and appointments to committees, after consulting with the outgoing Board Executive Committee, subject to the approval of the board.

(Source: Board of Governors' Resolutions September 1991, August 2000, November 2000, October, 2001 Action Plan/Report; Board of Governors' Resolution May 2010.)

- (b) It shall be the policy of the board that the president, with the approval of the board, may appoint ad hoc or special committees to handle special assignments, any such committees automatically to cease to exist upon completion of its assignment.

(1) Authorization for the creation of any Ad Hoc Committee must be sought and obtained by the President either from the board as a whole or from the Board Executive committee;

(2) The authorization for any Ad Hoc Committee (i) must be based upon a written charge setting forth the task or tasks to be carried out, and (ii) must not include any task that is expressly delegated by the Board Book to any standing committee or to the board as a whole;

(3) The President will retain full discretion to assign and make reassignments of the Chair and the membership of Ad Hoc Committees, provided that Trustees are consulted in advance, prior to their assignment;

(4) Written notice and an agenda of the meetings of any Ad Hoc Committee must be sent to all Trustees;

(5) Any Trustee who is not a member of an Ad Hoc Committee ~~must be~~ is permitted to attend Ad Hoc Committee meetings in person or by telephone only as ~~a non-voting participant~~ an observer;⁵ and

(6) Each Ad Hoc Committee shall be deemed dissolved as of the next State Bar Annual Meeting following its authorization, unless the board re-authorizes it.

(7) Should emergency circumstances or other unusual circumstances arise, the board may at any time suspend these guidelines upon the recommendation of the President.

⁵ PHASE II PROPOSED CHANGE: Recommend amendment to be consistent with Bagley-Keene.

- (c) Chairs of board committees are authorized to appoint subcommittees from among the members of the Board of Trustees to further the work of the committee.

(Source: Board of Governors' Resolutions, September-October 1981, May 2010.)

Section 4 Compliance with Bagley-Keene Open Meeting Act

~~Beginning April 1, 2016, m~~ Meetings of the Board of Trustees and its committees ~~will be~~ are subject to the Bagley-Keene Open Meeting Act, as required by Business and Professions Code section 6026.7, and Business and Professions Code section 6026.5.⁶

SEE: TAB 2.5, Article 1, Section 2.

(Source: State Bar Rule 6.57, adopted effective November 20, 2015; Business and Professions Code §§ 6026.5, 6026.7)

⁶ Recommend non-substantive update.

TAB 3.6

PUBLIC COMMENT

TITLE 1. GLOBAL PROVISIONS
DIVISION 2. PUBLIC COMMENT

Rule 1.10 Public Comment

- (A) Proposals for the Rules of the State Bar of California are circulated for public comment before adoption, amendment, or repeal by the Board of Trustees. The State Bar also makes available for public comment its proposals for the California Rules of Court. Proposals are circulated for a forty-five day period, which can be shortened to a minimum of 30 days or extended to a maximum of 90 days, as designated by the board.
- (B) Public comment is not required
 - (1) to correct clerical errors; clarify grammar; improve organization; conform to specific changes in a law; update references or citations; or make similar editorial changes;
 - (2) to modify a proposal that has been circulated for public comment when the board deems the modification non-substantive or reasonably implicit in the proposal; or
 - (3) to add or modify an appendix to these rules.
- (C) The board may determine that an emergency requires it to adopt, amend, or suspend a rule on an interim basis without first circulating it for public comment. No interim measure may remain in effect for more than 120 days.
- (D) The adoption, amendment, or repeal of a rule becomes effective as of the date specified by the board. If it specifies no date, the date of its action is the effective date.

(Source: State Bar Rule 1.10 adopted effective July 20, 2007; amended effective March 7, 2008; amended effective January 1, 2012.)

Rule 1.11 Availability of Public Comments

Public comment provided to the board regarding a rule proposal is available upon request, subject to a reasonable charge for [processing copies](#).⁷

(Source: Board of Governors' Resolutions January 1990, September 1996, December 2002, State Bar Rule 1.11 adopted effective July 20, 2007.)

⁷ PHASE II PROPOSED CHANGE: Recommend amendment to be consistent with the California Public Records Act. Also note that the language of the current Board policy is the same as the language of the State Bar Rules, Title 1, Division 2, Rule 1.11. The identical amendment is therefore recommended to Rule 1.11, as part of this same Agenda Item.

TAB 3.7

PUBLIC COMMUNICATIONS

**Article 2
PUBLIC COMMUNICATIONS**

~~Section 1 — Membership List from Other Entities~~

~~No employee or agent of the State Bar shall release to third persons, including governmental entities, any membership list of, or any part of any membership list of, a lawyer organization which has been furnished to the State Bar by said organization, unless authorized by the Board of Trustees, provided that, in advance of any action of the Board of Trustees the lawyer organization having provided the list shall be advised of the request for the list or a part thereof and afforded an opportunity to object.~~

~~(Source: Board of Governors' Resolution, June 1983.)~~

~~Section 2 — State Bar of California Membership List Policy~~

~~This policy governs the provision of the State Bar's membership list to third parties for purposes of providing promotional materials, marketing services and products or soliciting funding or support of activities, or other information that may be of benefit to members of the State Bar and that further the State Bar's own public purposes.~~

- ~~(a) — Except where otherwise specifically provided herein, the State Bar's membership list consists of names and addresses for all active members of the State Bar, except for those who have requested that their names be deleted from the list.~~
- ~~(b)(a) — The list may be provided in electronic form or hard copy to the following entities or individuals for the purposes indicated which hereby are approved by the State Bar as furthering its own public purposes:~~
 - ~~(1) — All State Bar of California approved MCLE providers and providers of MCLE approved activities for purposes of marketing those activities to the members.~~
 - ~~(2)(1) — Underwriters, brokers and administrators of the State Bar approved insurance programs for marketing, billing and claims purposes, and other purposes and duties related to these programs. The list may include inactive members and judges. Date of birth and date of admission may be provided for use in selecting the appropriate type of insurance product a member may be interested in.~~
 - ~~(3)(1) — Local, national and specialty associations of attorneys that are qualified as tax exempt under Section 501(c) of the Internal Revenue Code for solicitation of membership or funds to support the association's activities in furtherance of the State Bar's public purposes. Date of admission may be provided for marketing purposes only.~~

~~(4)(1) Lawyer referral services that are approved by the State Bar and operated in compliance with the Minimum Standards for a Lawyer Referral Service in California for recruitment and solicitation of funds to support activities in furtherance of the State Bar's public purposes.~~

~~(5)(1) Legal aid societies that make available free or low cost legal services to the indigent or those of low income, or organizations formed for charitable or other public purposes which furnish legal services to persons in respect to their civil or constitutional rights that are qualified as tax exempt organizations under Section 501(c) of the Internal Revenue Code for solicitation of membership or funds to support activities in furtherance of the State Bar's public purposes.~~

~~(6)(1) Courts and other government entities.~~

~~(7)(1) Potential candidates (and designees) for election to the State Bar Board of Trustees, for purposes related to the candidacy, provided that the list is limited to active members in good standing, whose principal place of business is located within the potential candidate's State Bar district and provided that the list is requested no earlier than the date that the Secretary announces the Board of Trustees election schedule and no later than the date the eligibility list closes.~~

~~(8)(1) Candidates for election to the State Bar Board of Trustees for purposes of their candidacy, from the date the eligibility list closes until the last day for voting.~~

~~(9)(1) Established publishers of legal directories for purposes of preparing written hard copy or electronic directories who agree to:~~

~~(A) not engage in the sale of mailing lists or labels;~~

~~(B)(A) not release the directory or any portion thereof in a form other than the directory format;~~

~~(C)(A) include a written statement notifying users that use of the information contained therein is limited to the subscriber of the directory; and~~

~~(D)(A) prohibit reproduction of any portion in any form without the permission of the publisher and the State Bar.~~

~~(10)(1) The Foundation of the State Bar of California to aid in matters pertaining to the advancement of the science of jurisprudence or the improvement of the administration of justice and for the solicitation of funds to support activities in furtherance of the State Bar's public purposes. The list provided may include inactive members.~~

~~(c)(a) Entities or individuals approved under this policy, wishing to purchase the list must file with the State Bar a signed agreement for use of the list and a signed Hold Harmless agreement on forms provided by the State Bar. The agreement for use may provide for the multiple use of the list during the effective dates of the agreement.~~

~~(1) — Entities or individuals must also provide, in advance of each request, a written statement of the use to be made of the list and a mock up or copy of each proposed mailing piece for State Bar approval.~~

~~(2)(1) — Upon approval, the State Bar will fulfill the request and bill the requesting entity or individual according to the current fee schedule for each use of the membership list.~~

~~(3)(1) — The requesting entity or individual must agree to include a designated State Bar staff name and address in all mailings to assure that a copy of items mailed using the list are sent to the State Bar.~~

~~(d)(a) — At the time of admission, each member of the State Bar shall be advised of this policy and of the purposes for which the member's name and address may be released. At that time, or at any time thereafter, the member may elect to have his or her name deleted from all lists released to outside entities under this policy if the member so chooses. In addition, notice of this policy and the member's right to remove his or her name from the membership lists under this policy, shall be provided to each member in the annual dues statement and other appropriate communications, including the State Bar's Web site and other electronic communications. The notice shall note the simple procedure by which a member may exercise his or her right to prohibit or restrict, at the member's option, the sale or disclosure of member's name and address under this policy.~~

~~(e)(a) — Requests for exceptions to the terms of this policy shall be referred to the Executive Director of the State Bar or designee if so delegated.~~

~~(Source: Board of Governors' Resolutions January 2001, March 2002, September 2004, September 2008.)~~

~~**Section 3 — Lists of Certified Specialists**~~

~~Names of Certified Specialists — Public Communications~~

~~The Board of Trustees authorizes the staff to advise inquirers that a person is or is not a certified specialist, whether or not the specialist has chosen to "opt-out" of the published list of specialists.~~

~~(Source: Board of Governors' Resolution, October 1982.)~~

~~Release of List of Certified Specialists~~

~~The Board of Trustees authorizes release of lists of certified specialists or a portion thereof provided that such lists shall contain the following caveats:~~

~~(a) — The list is current only as of a specific date and subject to subsequent deletions and additions.~~

~~(b)(a) — No lawyer is required to obtain a specialty certificate before the lawyer can practice law in the specialty field. Any lawyer, alone or in association with any other lawyer has the right to practice in any field of law.~~

~~(c)(a) — The list does not purport to include all attorneys qualified to practice in the particular field, and certified specialists may choose not to be listed.~~

~~(Source: Board of Governors' Resolution, October 1982.)~~

~~Deletion of Names From List--Voluntary~~

~~Any certified specialist may, upon written notice to the Board of Legal Specialization, request that his or her name be deleted from the list of certified specialists which is distributed to the public.~~

~~(Source: Board of Governors' Resolution, October 1982.)~~

~~Purchase of List~~

~~Purchasers will be required to pay a charge for the list which equals the cost of reproduction, plus postage and handling charges. Certified specialists may be sent one (1) copy of the current list of certified specialists when certified, as well as revisions which may occur from time to time, without charge.~~

~~(Source: Board of Governors' Resolution, October 1982.)~~

~~Yellow Pages Directory Listing~~

~~The State Bar shall maintain a heading entitled "State Bar of California Certified Specialists" in "yellow pages" directories throughout California.~~

~~(Source: Board of Governors' Resolution, January 1993.)⁸~~

⁸ PHASE II PROPOSED CHANGE: Recommend deletion to be consistent with the California Public Records Act.

TAB 5.1

STANDING AND SPECIAL COMMITTEES

Article 2

THE STANDING COMMITTEE ON PROFESSIONAL RESPONSIBILITY AND CONDUCT

Section 1 *Establishment*

The Standing Committee on Professional Responsibility and Conduct (hereinafter "the committee") is the successor to the Committee on Professional Ethics established by resolution of the Board of Trustees of the State Bar of California adopted September 29, 1964. The charge of the Committee on Professional Responsibility and Conduct may be found at section 15 of article 4 of this chapter.

(Source: Board of Governors' Resolutions, September 1964, July 1979, October 1994, December 2004.)

Section 2 *Members and Advisors*

- (a) The membership of the committee shall consist of fifteen (15) members (including a chair and vice-chair) and an advisor. Members shall be appointed by the board for a three (3) year term of office. The chair, vice-chair and advisor shall be appointed or reappointed by the Board of Trustees for a one (1) year term of office. The advisor shall be selected from former officers of the committee.

- (b) Each Committee year, the Committee shall select a Nominations Subcommittee. The Subcommittee shall consist of the Chair and Vice-Chair and three other members of the Committee selected by Chair.
 - (1) Any materials submitted by applicants shall be made available for review by Committee members at the offices of the State Bar in Los Angeles and San Francisco at the same time the materials are distributed to the Nominations Subcommittee. Staff shall advise the entire Committee when such materials are available for review. In addition, one set of applicant materials shall be presented to the Committee's membership for review at the first Committee meeting each year which follows the materials' distribution to the Nominations Subcommittee and also at any meeting where nominations are to be discussed.

 - (2) Following any interviews the Subcommittee may conduct, the Subcommittee will rank the applicants in order of preference and shall submit those applicant rankings to the Committee for its consideration at a regularly scheduled meeting ~~or as otherwise directed by the Committee.~~⁹ After considering the Subcommittee's recommendations, the Committee shall rank the applicants in order of preference and submit those rankings to the Board Committee. In evaluating potential members, the Committee uses the

⁹ PHASE II PROPOSED CHANGE: Recommend amendment to be consistent with Bagley-Keene.

following criteria, though no one factor is dispositive: (1) prior experience in the legal ethics field; (2) time and energy to undertake the significant responsibilities of Committee membership; (3) written and oral communication skills; (4) factors lending diversity to the Committee, including diversity based on race, sex, color, national origin and sexual orientation, as well as location and field of practice, years in practice (including status as a California Young Lawyer), and size of firm (if applicable); and (5) prior volunteer experience, particularly involvement in legal and other professional groups. For public members, the Committee values the ability to contribute a client perspective to the committee's deliberations.

- (c) Any member who fails to attend more than one-third of the regularly scheduled meetings during a committee year, without good cause, will be deemed to have resigned. A member is considered to have attended a meeting when the member is physically present for at least two thirds of the actual duration of the meeting, unless excused for good cause. When a member fails timely to complete an assignment for a meeting, without good cause, the member will be deemed to have missed the meeting, given the importance of pre-meeting preparation to the Committee's business. The Chair and Vice-Chair, in consultation with staff and in accordance with State Bar procedures, shall decide jointly whether and when to deem a member to have resigned.

(Source: Board of Governors' Resolutions, July 1979, July 1988, March 1992, October 1994, September 1999, December 2004.)

Section 3 Officers

The officers of the committee shall be the chair and vice-chair appointed or reappointed by the Board of Trustees from the committee.

(Source: Board of Governors' Resolutions, July 1979, March 1992, December 2004.)

Section 4 Meetings

Committee meetings shall be held in northern and southern California on the call of the chair. Subject to budget constraints, no fewer than four (4) meetings shall be held annually. At the discretion of the chair, meetings may be held by video-conference or other real-time electronic means of communication. A quorum shall consist of eight (8) members of the committee. A majority vote of those members voting shall control, except for formal ethics opinions, which require the affirmative vote of a majority of the entire Committee (see section 6(i)).

(Source: Board of Governors' Resolution, July 1979, September 1999, December 2004.)

Section 5 Voting

Each member has one vote. The advisor may not vote but may participate in all of the committee's deliberations. Proxy voting shall not be allowed. Members shall be allowed to vote at a meeting by telephone, if telephone communication is reasonably available. ~~Votes by mail, e-mail or other polling method outside a meeting may be conducted provided that the procedure~~

~~to be used is either announced in advance at the immediately preceding committee meeting or in writing at least ten business days in advance of the deadline for voting.~~¹⁰

(Source: Board of Governors' Resolution, December 2004.)

Section 6 *Responding to opinion requests*

- (a) Committee's options for responding to opinion requests. When presented with a request that the committee issue a formal opinion, the committee may elect (a) not to opine; (b) to issue a private letter opinion to the requestor; or (c) to issue a formal, published opinion. The committee may accept requests for an opinion from anyone, including the public, members of the Bar, the committee's own members and persons affiliated with the Bar, such as members of Board of Trustees and State Bar staff. Requests shall be presented to the committee for resolution along with a recommendation from the chair, if the chair so elects.
- (b) Criteria for issuing formal opinions. The committee may determine to proceed with the development of a formal opinion when a majority of the voting members of the Committee (not just a majority of those present at a meeting) determines that a request setting forth hypothetical facts presents issues of general interest to the Bar and/or the public and that the committee has satisfactorily resolved the issues presented by the hypothetical facts. However, the committee shall not issue a formal opinion when any of the following circumstances exist:
- (1) The requesting attorney is a member of a local bar association which has an ethics committee, provided that the committee may respond to the inquiry if forwarded by a local bar association ethics committee or if the request concerns an ethics problem on which there is a division of views among local bar association ethics opinions.
 - (2) There is a pending State Bar complaint, investigation, proceeding or litigation concerning the subject of the request.
 - (3) The request constitutes a complaint against member(s) of the State Bar.
 - (4) The request involves procedures employed by the bar in processing complaints against members of the State Bar.
 - (5) The request involves questions or issues, the resolution of which turns principally on law unrelated to the law governing lawyers.
 - (6) Where it is known that the request involves a situation in litigation or concerns threatened litigation or involves the propriety of sanctions within the purview of the courts, such as contempt.
 - (7) The chair and vice-chair have jointly determined that it would be inadvisable to respond to the request.

(Source: Board of Governors' Resolution, July 1979, December 2004.)

¹⁰ PHASE II PROPOSED CHANGE: Recommend deletion to be consistent with Bagley-Keene.

- (c) Letter Opinions. If the committee elects not to issue a formal opinion in response to a request, then the committee may issue a private letter opinion or decline to opine. In either event, the requestor shall be notified by letter. The committee typically issues letter opinions when there is no policy reason for the committee to decline comment on the request and the request is simple, routine or otherwise not of general interest to the Bar's members. The letter shall be drafted by the chair or by a member assigned by the chair. ~~The letter may be approved in one of two ways. First, the~~ The committee may approve the opinion by affirmative vote as provided in these rules. ~~Alternatively, on approval of the chair, the draft letter may be distributed to the membership and, if there is no objection by two (2) or more of the membership within ten days, the letter opinion shall be deemed approved. If two members register an objection, the matter shall be placed on the agenda for discussion at a succeeding meeting of the committee.~~¹¹

(Source: Board of Governors' Resolution, July 1979, December 2004.)

- (d) Changed circumstances. If, at any time after an opinion request has been assigned for drafting as a formal opinion, but before final publication, the committee shall decline to act further on the request and no opinion shall be published if any of the circumstances listed in section (b), subdivisions (1) through (6) above, come to light.
- (e) Format of Formal Opinions. Drafts of formal opinions shall be prepared by the member or members assigned by the ~~chair~~ staff. The drafter shall ordinarily circulate their draft to the committee in a pre-meeting agenda packet distributed by the staff ~~or otherwise as directed by the chair, such as by e-mail.~~¹² Each opinion shall set forth:
- (1) A statement of issue or issues addressed;
 - (2) A concise digest summarizing the committee's conclusions and reasoning;
 - (3) Hypothetical facts of the ethical question presented in a general manner without identification of the requesting attorney or any details of the request which would permit such identification;
 - (4) The Rules of Professional Conduct or other authorities relied upon;
 - (5) An analytical discussion of the applicable rules applied to the hypothetical facts; and
 - (6) A conclusion.

(Source: Board of Governors' Resolution, July 1979, December 2004.)

- (f) Dissenting Opinions. While the Committee typically issues opinions on the basis of consensus, or at least substantial majority vote, a member may elect to have notice of his or her dissent included with the opinion. In this event, the number of dissenters, but not their names, will be noted in the final opinion. In the rarest of

¹¹ PHASE II PROPOSED CHANGE: Recommend amendment to be consistent with Bagley-Keene.

¹² PHASE II PROPOSED CHANGE: Recommend amendment to be consistent with Bagley-Keene.

cases, a dissenting opinion or opinions explaining the reasons for any dissent may be added to the opinion, in the discretion of the chair. As with the opinion of the Committee, the dissenting opinion will not be attributed to particular authors but will note on how many members' behalf the dissent is filed.

- (g) Publication of Proposed Formal Opinions for Public Comment. The committee shall publish proposed formal opinions, and provide an opportunity for public comment of no less than 60 days, before approving a formal opinion for final publication. Upon a vote of the committee, the formal opinion shall be distributed to members of appropriate committee or committees of the Board of Trustees, key individuals on the State Bar staff who participate in regulatory activities, the chairpersons of local bar association ethics committees and, in the discretion of the chair, other interested persons or entities, advising them that the hypothetical is under consideration by the committee for a formal opinion and requesting their comments. Proposed opinions published for public comment shall be made available to the public through means reasonably available to the committee, such as through the committee staff and the State Bar website.
- (h) Issuance of Formal Opinions Following Public Comment. After considering any public comment received on a draft formal opinion, the committee may vote to issue the opinion as drafted, to modify the opinion and approve the modified opinion for publication, to decline to opine or to issue a private letter opinion. In the event a proposed formal opinion is modified after publication for public comment in such a manner as to reflect the committee's view that additional ethical duties or obligations apply to the hypothetical facts, then the proposed formal opinion shall be published again for public comment as provided in section (g).
- (i) Majority Vote Required: ~~Telephonic & Mail Ballots.~~ Proposed opinions may be approved pursuant to sections (g) and (h) only by a majority of all voting members of the committee, ~~whether at a meeting or by poll outside of a meeting (such as by telephone or e-mail). If the proposed opinion has been placed on the agenda for a meeting and discussed at a meeting, the committee may approve the opinion with directions to a subcommittee to circulate a revised version outside of a meeting. Unless, within ten (10) days after the draft opinion and ballot are circulated, two (2) or more voting members request discussion at a succeeding meeting of the committee, the opinion will be deemed approved.~~¹³
- (j) Transmission to Requestor and Board Committee. Once the committee has approved a formal opinion for publication pursuant to section (i), the formal opinion shall be issued to the requesting party and ~~concurrently circulated to members of the Board of Trustees' Committee on Regulation, Admissions and Discipline Oversight (hereafter "Board Committee"). If within thirty days of circulation, no member of the Board Committee objects to publication, the formal opinion shall be published as hereinafter provided. If within thirty (30) days of circulation, any member of the Board Committee does object,~~ the issue of whether the formal opinion shall be published shall be placed on the agenda of the next succeeding meeting of the Board Committee on Regulation and Discipline for decision.¹⁴

¹³ PHASE II PROPOSED CHANGE: Recommend amendment to be consistent with Bagley-Keene.

¹⁴ PHASE II PROPOSED CHANGE: Recommend amendment to be consistent with Bagley-Keene.

- (k) Publication and Maintenance of Opinions. Once approved pursuant to section (j), formal opinions shall be published in State Bar publications, including the State Bar web site, as space is available, and the committee may cause its formal opinion or a summarization thereof to be published in other appropriate publications. All approved letter and formal advisory opinions shall be maintained on file at all State Bar offices and shall be available to any member of the bench, bar or public upon request. A reasonable charge to defray the costs of reproduction of such opinions and postage may be required.

(Source: Board of Governors' Resolution, December 2004.)

Section 7 Effect of Opinions

All opinions issued by the committee express only the judgment of the committee and are advisory only. Each letter and formal opinion shall conclude with the following statement:

This opinion is issued by the Standing Committee on Professional Responsibility and Conduct of the State Bar of California. It is advisory only. It is not binding upon the courts, the State Bar of California, its Board of Trustees, any persons or tribunals charged with regulatory responsibilities, or any member of the State Bar.

(Source: Board of Governors' Resolution, July 1979, December 2004.)

Section 8 Revision of Rules of Professional Conduct or Other Laws Governing the Conduct of Attorneys

The committee shall, upon reference of the Board of Trustees or its secretary, or on its own initiative with the concurrence of the Board Committee, study and submit recommendations to the Board of Trustees regarding proposed additions or amendments to or repeal of Rules of Professional Conduct of the State Bar or other laws governing the conduct of attorneys. In formulating its recommendations to the board, the committee shall cause its proposals to be published and solicit written comments thereon and, as directed by the Board of Trustees, conduct public hearings thereon.

(Source: Board of Governors' Resolution, July 1979, December 2004.)

Section 9 State Bar Staff

- (a) The chair shall:
- (1) Advise the staff of any failure to act pursuant to section 6(a) of this article so that staff can advise the requesting attorney.
 - (2) Cause to be provided to staff a copy of all correspondence by, or to, any committee member or advisor concerning committee work.
 - (3) Provide the staff with copies of draft and final letter opinions.
 - (4) Forward approved formal opinions to the staff for issuance and publication, as appropriate.

- (b) The staff shall:
- (1) Receive requests for opinions from requesting attorneys and references from the Board of Trustees or its secretary and transmit them to the chair, vice-chair and the committee.
 - (2) Advise requesting attorneys of the existence, functions and procedures of the committee.
 - (3) Provide copies of requests for opinions to the members of the committee.
 - (4) Following receipt of approved formal opinions and draft letter opinions, advise the chair:
 - (A) Of any circumstances arising during the period in which the request was being processed requiring or warranting committee inaction pursuant to section 6(b) of this article; and
 - (B) Of any other reasons militating against issuance of the opinion.
 - (5) Issue approved formal opinions to the requesting attorney unless the chair withdraws the opinion for committee reconsideration.
 - (6) Cause opinions issued by the committee to be published as appropriate.
 - (7) Maintain all official files and records of the committee and make such files available to interested members of the bench and bar as appropriate, ~~consistent with the Committee's rules about confidentiality.~~¹⁵
 - (8) Assist the committee in performing its functions.

(Source: Board of Governors' Resolution, July 1979, December 2004.)

~~Section 10~~—Confidentiality

~~Generally, the committee's deliberations are confidential and meeting shall be held in closed session, except (a) the committee may hold open sessions when appropriate, such as to receive input from members of the Bar or the public; or (b) when required by law or State Bar policy requiring the committee to work in open session.~~¹⁶

(Source: Board of Governors' Resolution, December 2004.)

Section ~~10~~ 14 Conflicts

- (a) Members must disclose to the Committee any relationship with an inquirer.

¹⁵ PHASE II PROPOSED CHANGE: Recommend amendment to be consistent with the California Public Records Act.

¹⁶ PHASE II PROPOSED CHANGE: Recommend deletion to be consistent with Bagley-Keene.

- (b) Members are encouraged to disclose any other relationship or interest that might have, or appear to have, a significant effect on the Committee's deliberations or decisions.
- (c) A member may disqualify himself or herself from voting and/or deliberations. However, members are not required to do so. In fact, members are encouraged to participate once any relationship or interest is disclosed to the Committee so that the Committee will have the benefit of all members' participation, input and expertise.

(Source: Board of Governors' Resolution, December 2004.)

TAB 5.2

MEETINGS OF STATE BAR COMMITTEES

Section 2 Compliance with Bagley-Keene Open Meeting Act

~~Beginning April 1, 2016, the~~ The State Bar is subject to the Bagley-Keene Open Meeting Act and all meetings of the State Bar are subject to the Bagley-Keene Open Meeting Act, as required by Business and Professions Code section 6026.7, and Business and Professions Code section 6026.5.¹⁷

Notwithstanding any other law, the Bagley-Keene Open Meeting Act shall not apply to the Judicial Nominees Evaluation Commission or the Committee of Bar Examiners.

(Source: State Bar Rule 6.66, adopted effective November 20, 2015; Business and Professions Code §§ 6026.5, 6026.7)

¹⁷ Recommend non-substantive update.