

AGENDA ITEM

JULY 10 – Board of Trustees – May 12, 2017 Open Minutes

**Board of Trustees Meeting
Friday, May 12, 2017
Open Minutes
The State Bar of California
180 Howard Street
Board Room, 4th Floor
San Francisco, CA 94105-1617**

The Board of Trustees of The State Bar of California convened in open session at 9:15 am at the State Bar of California, 180 Howard Street, Board Room, 4th Floor, San Francisco, CA, Friday May 12, 2017, James Fox presiding.

The following members of the Board of Trustees were present: Janet Brewer, Mark Broughton, Michael Colantuono, Terrance Flanigan, Renée LaBran, Jason Lee, Joanna Mendoza, Danette Meyers, Richard Ramirez, Sean M. SeLegue, Stacie Spector, Brandon Stallings, Alan Steinbrecher and Todd Stevens.

The following members of staff were present: Saul Bercovitch, Randall Difuntorum, Francisco Gomez, Dag MacLeod, Vanessa Holton, Elizabeth Parker, Leah Wilson and Christine Wong.

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.

Mr. Fox called for public comment, inquiring as to whether there were persons in attendance who wished to comment on a particular item on the agenda.

Representatives of SEIU, Raquel Hines and Kimberly Kasrelivovich, thanked the Board and expressed that they were speaking on behalf of employees and members who have an interest in the upcoming contract negotiations, are invested in their work at the Bar,

and believe in the mission of the State Bar. Ms. Kasreliovich stated that the union's foremost priority was to support passage of the State Bar Fee Bill. She acknowledged that there were many competing demands being made of the State Bar workforce and management; making for a challenging and ever changing work environment. She emphasized that State Bar staff was not responsible for the criticisms levied against the Bar or the failure of the 2017 fee bill, and noted that staff always endeavors to give their best effort. Ms. Kasreliovich concluded by stating that staff was willing to fight to ensure that salaries and benefits were protected.

Mr. Fox thanked Ms. Hines and Ms. Kasreliovich for their comments and their spirit of cooperation and recognition of the State Bar's public protection mission.

The Board went into closed session at 9:27 am. The Board considered appointments and the action taken is reported below.

6010 The following item on the consent agenda was presented to the Board, and no objection being raised thereto, was deemed unanimously adopted.

6011 MAY 2017 - Section Executive Committees & California Board of Legal Specialization, 2017-2018 Annual Appointments of Officers and Members

On May 11, 2017 the Stakeholder Relations, Access to Justice, and Appointments Committee (SAA) will considered appointments to the following Section Executive Committees and the California Board of Legal Specialization. The Board concurred with the SAA Committee and approved the appointments to Section Executive Committees: Criminal Law; Environmental; Family Law; Intellectual Property; Labor and Employment Law; Public Law; Solo and Small Firm; Taxation; Trust and Estates; Workers' Compensation; and the California Board of Legal Specialization

RESOLVED, that the Stakeholders, Access to Justice, and Appointments Committee recommends that the Board of Trustees hereby appoint or reappoint, as the case may be, officers and members of the Section Executive Committees and California Board of Legal Specialization as set forth on the forms attached and made a part hereof; effective at the close of the 2017 State Bar Annual Meeting (September 6 & 7, 2017), or as indicated; each officer and member to serve a term expiring as indicated; or until further order of the Board, whichever occurs earlier.

6020 The following item on the appointments agenda were presented to the Board, and no objection being raised thereto, were deemed unanimously adopted.

6021 MAY - American Bar Association (ABA) House of Delegates, Annual Appointment of Members

The State Bar appoints a total of 11 delegates to the ABA House of Delegates. At its May 12, 2017 meeting, the Board considered appointments of four delegates. The terms of the State Bar's other four delegates do not expire until August 2018. ABA delegates serve two-year terms. Pursuant to the Bar's current guidelines, the State Bar delegates may serve a maximum of six years, or three consecutive terms, unless otherwise authorized by the Board.

The State Bar received 8 applications for these four positions. Two current delegates whose terms expire in 2017 and who have served less than the maximum of six years applied for reappointment; six applications were from new candidates.

RESOLVED, that the Stakeholders, Access to Justice & Appointments Committee recommends that the Board appoint or reappoint, as the case may be, the following, State Bar delegates, American Bar Association (ABA) House of Delegates, contingent upon appointees being of good standing with the ABA; each term is for two years and is effective upon the conclusion of the 2017 ABA Annual Meeting (August 15, 2017) and expires at the conclusion of the 2020 ABA Annual Meeting (August 4, 2020), or until further order of the Board, whichever occurs earlier: Ruthe C. Ashley, Loren Kieve, Michelle Philo and Janice Mulligan; and it is

FURTHER RESOLVED, that that that the board committee recommends that the Board appoint the following alternates to the State Bar's delegation to the ABA House of Delegates, contingent upon the alternates being of good standing with the ABA; each alternate term is for one-year and is effective upon conclusion of the 2017 ABA Annual Meeting (August 15, 2017) and expires at the conclusion of the 2020 ABA Annual Meeting (August 4, 2020), or until further order of the Board, whichever occurs earlier: Alex H. Chan, Ernestine Forrest and Elizabeth Meyers

6022 MAY - Judicial Council, Annual Appointment of Members

The State Bar appoints four lawyer members to the Judicial Council, with the members serving staggered three-year terms. The terms of two members, Donna D. Melby and Debra E. Pole, expired September 14, 2017.

The State Bar received two (2) applications for two available positions, but one was withdrawn. The Board made one appointment and opened up the application deadline to June 26 and will appoint the second position at its July 14 meeting.

RESOLVED, that the Stakeholders, Access to Justice, and Appointments Committee recommends that the Board of Trustees appoint Gretchen M. Nelson, State Bar member, Judicial Council, for a three-year term commencing September 15, 2017, and expiring September 14, 2020, or until further order of the Board, whichever occurs earlier.

The Board adjourned its closed session and returned to open session at 10:04 am.

10 Minutes

March 9, 2017 Minutes [regular meeting]

March 10, 2017 Minutes [regular meeting]

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the minutes of the regular meeting of the Board of Trustees held on March 9, 2017 in San Francisco, California are approved as written; and it is

FURTHER RESOLVED, that the minutes of the regular meeting of the Board of Trustees held on March 10, 2017 in San Francisco, California are approved as written.

All members listed on the slip voted yes.

30-1 MAY - Ratification of 2016-2017 Board Executive Committee Assignment

An assignment to the Board Executive Committee was presented for ratification on May 12, 2017 for the 2016–2017 board year.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees hereby affirms the assignment of Richard Ramirez to the Board Executive Committee for the 2016-2017 board year as presented on May 12, 2017.

Upon motion made, seconded and unanimously adopted, it was

30-2 MAY - Proposed Multi-Year Board Meeting Schedule for 2017-2018

The Board approved revisions to the Board meetings schedule for 2017–2018.

Upon motion made, seconded and unanimously adopted, it was

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

All members listed on the slip voted yes.

41 – Executive Director’s Report

Ms. Parker reported on the Governance in the Public Interest Report which would be filed on May 15. Ms. Parker noted that this was an informational briefing, but that she wanted the Board to provide input. She noted that one thing that came out at a very productive series of eight meetings, was an interesting recognition that this was a time of transformational change. The Task Force conducted a comprehensive review of the role, structure, composition and functioning of the Board, and its committees, as well as all of the State Bar's volunteer supported sub-entities. Also recognizing the significant change in Board structure which will result when six elected Trustee positions are eliminated, the Task Force had begun to examine Board structure and program configuration.

42 – Secretary’s Report

Announcement of the candidates for 2017-18 Board of Trustees Officers

Treasurer – Alan Steinbrecher / Todd Stevens
Vice – President – Jason Lee – deemed elected
President – Michael Colantuono / Danette Meyers

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.

54-141 MAY - 2017 First Quarter Financial Reports

In adherence to the State Bar’s Fiscal Control Policies and Procedures, the Office of Finance prepared the 2017 first quarter financial report for the Board’s review. This financial report consists of three separate reports: Financial Statement Report, Investment Report and Client Security Fund (CSF) Report.

RESOLVED, that the Board of Trustees approve the 2017 First Quarter Financial Reports in the form this day before the Board, for the year ended December 31, 2016, as certified by the Chief Financial Officer, and on file in the San Francisco office of the State Bar.

54-181 MAY - Report of Action taken April 24, 2017, by the Board Audit Committee Chair on behalf of the Board – to Receive and Approve Filing of the Audited Financial Statements for Years Ended December 31, 2016 and 2015

This is a report of action taken on April 24, 2017 by the Board Audit Committee Chair and Vice Chair to receive and approve filing of the Audited Financial Statements for Years Ended December 31, 2016 and 2015. Pursuant to Business and Professions (B&P) Code sections 6145, 6031.5(a), and 6222, which requires the statements to be certified by the Treasurer and sent by April 30th of each year to the Board of Trustees, the Chief Justice of the Supreme Court and to the Assembly and Senate Committees on Judiciary.

In addition, the accounting firm of Moss Adams, LLP, has examined the Statement of Expenditures of Mandatory Membership Fees (“Mandatory Fee Statement”) and prepared its Independent Auditor’s Report. After its receipt by the Board of Trustees and later in the year when the 2018 annual billing statements are mailed to members, the examined statement and the auditor’s report will be published by posting on the State Bar’s Web site with notice to members in the billing statements and the December 2017 issue of the California Bar e-Journal.

WHEREAS, on April 24, 2017, the Board Audit Committee Chair, who is authorized to review the draft financial statements and direct staff to submit them to the Legislature and Supreme Court on behalf of the Board of Trustees, adopted a resolution to receive and order filed the Audited Financial Statements for Years Ended December 31, 2016 and 2015.

121 MAY - Evaluation of the State Bar and the DOJ’s retention of applicant fingerprint records and the impact on criminal complaint monitoring

Upon analyzing the legislative history of Business and Professions Code section 6054, the Office of General Counsel concluded that the State Bar is obligated to receive criminal arrest notification services from the DOJ, regardless of countervailing privacy concerns.

Specifically, Business and Professions Code section 6054 requires the retention of “all fingerprint records of applicants admitted or members reinstated, or provided pursuant

to subdivision (k) or (l) of Section 6068” for the “limited purpose of criminal arrest notification.” Without entering into a Contract for Subsequent Arrest Notification with the DOJ there is no way for the State Bar to be notified of an applicant’s criminal arrests subsequent to admission. Therefore, the State Bar should enter into a Contract for Subsequent Arrest Notification with the DOJ as soon as practicable, such that the State Bar is able to receive subsequent arrest notification services pursuant to Business and Professions Code section 6054. Lastly, the State Bar will need to revise its Moral Character Application instructions such that it corresponds with Business and Professions Code section 6054.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that State Bar staff will enter into a contract with the California State Department of Justice to receive subsequent arrest notifications for all new applicants of the State Bar as soon as practical.

FURTHER RESOLVED, that the State Bar will revise its Moral Character Application Instructions to mirror the language in Business and Professions Code section 6054, and provide the applicant explicit notice that his or her fingerprints will be retained by the DOJ;

FURTHER RESOLVED, that State Bar staff will develop a process for receiving, evaluating, and, destroying criminal arrest information received by the DOJ.

[Amended at the meeting on May 11 to include the following provision]

Staff are directed to suspend the destruction of fingerprint cards pending further direction from RAD and/or the Board.

All members listed on the slip voted yes, except Mr. Stevens who had left the meeting.

131 MAY - Proposed Amendments to Legal Specialization Rules regarding Board of Legal Specialization Advisory Commission Appointments

Proposed amendments to the State Bar Rules Title 3, Division 2, Chapter 2, Article 1, Rules 3.92 and 3.93 are being recommended to reflect the Board of Trustees’ March 2017 action delegating the appointment of members and officers to California Board of Legal Specialization (CBLs) Advisory Commissions to the CBLs. Since these are technical amendments to conform the rules to the recent action of the Board of Trustees, no public comment is necessary.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees approves the proposed amendments to Title 3, Division 2, Chapter 2, Article 1, Rules 3.92 and 3.93 of the Rules of the State Bar regarding Board of Legal Specialization Advisory Commission appointments as included hereto, effective immediately.

All members listed on the slip voted yes, except Mr. Stevens who had left the meeting, and Ms. Mendoza and Mr. SeLegue who abstained.

132 MAY - Consistency Project – Proposed adoption of amendments to the State Bar rules regarding law corporations

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees, following the release for public comment and receiving no public comments in response, hereby adopts amended State Bar Rules regarding law corporations, as contained in Attachment A hereto.

All members listed on the slip voted yes, except Mr. Stevens who had left the meeting.

161 MAY 2017 - Request Approval for Letter of Support to California Members of Congress in Support of Funding for the Legal Services Corporation

The proposed FY 2018 Federal budget eliminates funding for the Legal Services Corporation (LSC). A coordinated national effort is underway to voice opposition to the proposal and to support continued funding for LSC. In light of the serious consequences likely to occur in California if funding for the Legal Services Corporation is eliminated, it was recommended that the State Bar of California to send an individual letter of support to each member of the California Congressional Delegation.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees authorize its President to send the attached proposed letter to individual members of the California Congressional Delegation in support of continued funding for the Legal Services Corporation

All members listed on the slip voted yes.

162 MAY - Proposed Amendment of Disclaimer Language for Legislative Letters

Current Board policy requires that legislative comments of sections and committees bear a disclaimer providing that the stated position has not been adopted by the State Bar's Board of Trustees "or overall membership." This Agenda Item proposes amending the required disclaimer language to strike "or overall membership." This amendment would make the point that the State Bar is a regulatory agency created by statute under the California Constitution to regulate the practice of law, and not a membership association.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees hereby adopts the amendments to the required disclaimer language on legislative positions taken by State Bar entities, as contained in Attachment A hereto.

All members listed on the slip voted yes.

703 MAY - Proposed Amended Rules 5-110 and 5-220 of the Rules of Professional Conduct – Consideration Following Action by the Supreme Court

On May 1, 2017, the Supreme Court of California ("Court") issued an order on the State Bar's request to approve proposed amendments to rules 5-110 and 5-220 of the Rules of Professional Conduct of the State Bar of California. The order is attached. The State Bar's request was granted in part and denied in part. The order provides instructions for the State Bar's further consideration of the parts of the proposal that were not approved.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees assigns the Commission for the Revision of the Rules of Professional Conduct of the State Bar of California to study the Supreme Court of California's May 1, 2017 order on proposed amended rules 5-110 and 5-220; and it is

FURTHER RESOLVED, that the Commission is directed to make recommendations to the Board for responding to the Court, including revised rule proposals; and it is

Amended at the meeting on May 12 to include the following provision]

FURTHER RESOLVED, in consultation with the RAD Chair, staff is authorized to refer future orders and correspondence from the Court regarding the rules directly to the Commission, RAD, or the Board, as appropriate.

All members listed on the slip voted yes.

The Board adjourned its meeting at 12:14 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, July 14, 2017, at a time to be determined.