



The State Bar of California

AGENDA ITEM

JANUARY 10 – Thursday, November 14, 2019, Open Session Minutes

Open Session Minutes
Regular Meeting of the Board of Trustees

State Bar of California
180 Howard Street
Boardroom, 4th Floor
San Francisco, California

Thursday, November 14, 2019
12:30 p.m.

Time meeting commenced: 12:30 p.m. (Board immediately went into Closed Session and recommenced Open Session at 2:47 p.m.)

Time meeting adjourned: 4:45 p.m.

Chair: Alan Steinbrecher

Secretary: Sarah Cohen

Members present: Mark Broughton, Hailyn Chen, Juan De La Cruz, Sonia Delen, Ruben Duran, Chris Iglesias, Debbie Manning, Joshua Perttula, Sean SeLegue

Members joined in progress: n/a

Members absent: José Cisneros, Renée LaBran, Brandon Stallings

Public Comment:

Julian Sarkar: Mr. Sarkar, an attorney in San Francisco representing Bar Exam takers in litigation against the State Bar, requested that the Board disclose their direct involvement in the administration and the grading of the July 2019 Bar Exam to the Supreme Court, Legislature, and public. He believes the “2017 California Bar Exam Standard Settings Study” lacks a clear definition of public protection. He also believes the “Recent Performance Changes on the

California Bar Examination Report” omits the additional subjects that have been added to the exam over the 9 year period of the study.

Bridget Gramme: Ms. Gramme, Director of the Center for Public Interest Law at the University of San Diego Law School, offered three recommendations relating to the conduct of Board meetings. The first is to have the Board conduct its closed session at the end of the meeting. The second is to have a dedicated phone operator during the meeting for a more orderly public comment period. The third is to have a public comment period with each board agenda item, instead of just one at the beginning of the meeting. She also supports the staff recommendation for an extension of the deadline for submitting the Task Force on Access through Innovation of Legal Services (ATILS) Report. She believes it is important to get feedback from nonlawyers.

Daniel Everett: Mr. Everett spoke about a study, which he claims shows how black/brown attorneys are subject to discipline at a significantly higher rate than white male attorneys. He believes the study should be of public concern.

10 Minutes

September 19, 2019 – Open Session Minutes – Adopted by unanimous consent

September 20, 2019 – Open Session Minutes – Adopted by unanimous consent

30 Chair's Report

30-1 – Approval of Revised Board Committee and Liaison Assignments

Moved by Duran, Seconded by De La Cruz.

Motion Passed by Substitution of the Roll

40 Staff Reports

41 Executive Director

1. Report from Executive Director

Informational Only – no action

50 Consent Agenda - Collectively Deemed Approved by Unanimous Consent

50-1 Approval for Specified Contracts Pursuant to Business and Professions Code Section 6008.6

1. For Bar card printing, with: Softfile dba Altec

2. For February 2021 Bar Exam Testing Accommodations Testing Rooms and Meeting Space, with: Hilton Sacramento Arden West

3. For July 2021 Bar Exam Testing Accommodations Testing Rooms and Meeting Space, with: Hilton Sacramento Arden West
4. For February 2021 Bar Exam Meeting Space, with: The Pasadena Center
5. For July 2021 Bar Exam Meeting Space, with: the Pasadena Center
6. For February 2021 Bar Exam Testing Rooms and Meeting Space, with: Doubletree Hotel-Orange
7. For July 2021 Bar Exam Testing Rooms and Meeting Space, with: Doubletree Hotel-Orange
8. For February 2020 Bar Exam Meeting Space, with: McClellan Conference Center
9. For Los Angeles office Janitorial Maintenance and Services, with: ABM Business & Industry
10. For Los Angeles office Engineering Maintenance and Services, with: ABLE Services
11. For Los Angeles office 2019 Engineering Maintenance and Services, with: ABLE Services
12. For Los Angeles office reconfiguration, with: The Sheridan Group - *withdrawn*
13. For Los Angeles office reconfiguration, with: Driver SPG - *withdrawn*
14. For San Francisco office reconfiguration, with: Team Construction - *withdrawn*
15. For San Francisco office reconfiguration, with: KBM Hogue - *withdrawn*
16. For Network Printer Maintenance and Support, with: Office Depot

It is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approves execution of the contracts listed herein.

50-2 Annual Recommendation to Supreme Court for Expungement of Suspensions of Licensees Delinquent in Payment of License Fees, Penalties and Charges

It is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees direct staff to submit the annual recommendation to the California Supreme Court that licensees that meet the criteria for expungement of suspensions for failure to pay fees, as set forth in California Rule of Court 9.8, have their suspensions expunged; and it is

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

50-3 Annual Recommendation for Expungement of Administrative Inactive Status for Minimum Continuing Legal Education (MCLE) Non-Compliance in Accordance with Rule 9.31

It is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees directs staff to determine which records of inactive enrollment for failure to comply with MCLE requirements qualify for the annual expungement pursuant to California Rule of Court 9.31(f); and it is

FURTHER RESOLVED, that staff then expunge the eligible inactive enrollments from the licensed attorneys' records, and notify each attorney of the expungement.

50-4 Conform State Bar Rule to Statutory Change to Fee Scaling Income Threshold

It is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approves the update required to State Bar Fee Scaling Rule 2.15 (A) as described in order to conform with Business and Professions Code section 6141.1, effective January 1, 2020.

50-5 Proposed Changes to Conflict of Interest Code for Designated Employees: Request for Approval

It is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that Board of Trustees hereby adopts the proposed Conflict of Interest Code for Designated Employees of the State Bar of California, including Appendix A and B, as set forth in Attachments A, B, and C.

50-6 Appointment of Office of General Counsel as Counsel for Legal Services Trust Fund Commission Pursuant to State Bar Rule of Procedure 4403

Updated 2017-2022 Strategic Plan Rev. 2: 4.a.

It is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that, pursuant to Rules of Procedure of the State Bar of California, Rule 4303, the Board of Trustees appoints the Office of General Counsel as counsel to the Legal Services Trust Fund Commission in any State Bar Court proceeding initiated by a Legal Services Trust Fund grant applicant seeking review of a decision by the Legal Services Trust Fund Commission.

50-7 Adoption of Employee and Judge Pay Schedules

The Finance Committee recommends that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approves the employee pay schedule included as Attachment A, as described herein; and it is

FURTHER RESOLVED, that the Board of Trustees approves the State Bar Court Judge pay schedules included as Attachment B, as described herein.

50-8 Recommendation Regarding Licensees Not in Compliance with Fingerprinting Requirement

It is recommended that the Board of Trustees approve the following resolution:

RESOLVED, pursuant to California Rule of Court 9.9.5 and the Rules of the State Bar, that the Board hereby authorizes that those licensees subject to the December 1, 2019, fingerprinting deadline who do not bring themselves into compliance with the fingerprinting requirement by December 2, 2019, be enrolled as inactive and placed on “Not Eligible to Practice” status, effective December 3, 2019; and it is

FURTHER RESOLVED, that the Board hereby authorizes staff to remove individual attorneys from inactive status once they have submitted proof of compliance.

50-9 Proposed Correction to Changes to State Bar Rule 2.16 Adopted in January of 2019

Updated 2017-2022 Strategic Plan Rev. 2: 1.b.

It is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approve the recommended correction to nonsubstantive changes made to State Bar Rule 2.16(E) as reflected in Attachments B and C; and it is

FURTHER RESOLVED, that the revisions are effective November 14, 2019.

50-10 Conform Schedule of Charges and Deadlines Regarding Multijurisdictional Practice Program (MJP) Fees and Foreign Legal Consultant Fees with Licensee Fees

It is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approves the modifications to the Schedule of Charges and Deadlines, included as Attachments A and B, to align the renewal, payment, and penalty assessment deadlines for the Multijurisdictional Practice Program Fees and Foreign Legal Consultant Program fees with the deadlines for payment of licensee fees.

54-111 Annual Recommendation for Appointment and Reappointment of Fee Arbitrators and Reappointment of Presiding Arbitrator and Assistant Presiding Arbitrators

It is recommended that the Board Executive Committee and Board of Trustees approve the following resolutions:

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 Program; each for a one-year term commencing January 1, 2020, and expiring December 31, 2020; and it is

FURTHER RESOLVED, that the Board of Trustees appoints Paul Dubow, State Bar Number 47710, to the State Bar Mandatory Fee Arbitration Program, for a term commencing November 14, 2019, and expiring December 31, 2020; 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, 2020 and expiring December 31, 2020; and it is

FURTHER RESOLVED, that the Board of Trustees reappoints Clark Stone, San Jose, and Lee Straus, Los Angeles, as the State Bar's Assistant Presiding Arbitrators effective January 1, 2020 and expiring December 31, 2020.

54-121 Proposed State Bar Rule on Monetary Sanctions: Return from Public Comment and Request for Approval

Updated 2017-2022 Strategic Plan Rev. 2: 2.d.

It is recommended that the Regulation and Discipline Committee and Board of Trustees approve the following resolution:

RESOLVED, that staff submit to the California Supreme Court for approval proposed State Bar Rule of Procedure, rule 5.137, attached hereto as Attachment A.

54-122 Amendment to Rule of Procedure 2201 (Appointment and Authority): Return from Public Comment and Request for Approval

It is recommended that the Regulation and Discipline Committee and Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees hereby approve and adopt proposed amendment to State Bar Rule of Procedure 2201, attached hereto in Attachment A.

154-123 Voluntary Resignation Form Revision: Request for Approval

It is recommended that the Regulation and Discipline Committee and Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approves the revisions and hereby adopts the revised Voluntary Resignation form as set forth in Attachment A, effective upon adoption.

54-124 Proposed Additions to Board Policy Regarding Consumer Alerts

It is recommended that the Regulation and Discipline Committee and Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees adopts an amendment to the Board policy regarding posting of consumer alerts to include Consumer Alert Boxes when an attorney is involuntarily inactively enrolled pursuant to State Bar Rule, rule 2.46 for noncompliance with the licensee fingerprinting requirement (Bus. & Prof. Code, § 6054, Cal. Rule of Court, rule 9.9.5) and when an attorney is suspended by the California Supreme Court for nonpayment of licensing fees pursuant to State Bar Rules, rule 2.33 (Bus. & Prof. Code, § 6143).

54-141 Annual Review of Investment Policy

The Finance Committee recommends that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approves the proposed amendments to the Investment Policy as proposed by the Chief Financial Officer.

54-142 Q3 Financial Statement Report, Investment Report, Client Security Fund Report

The Finance Committee recommends that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approve the 2019 3rd Quarter Financial Report in the form this day before the Board, for the three months ended September 30, 2019, as certified by the Chief Financial Officer, and on file with the San Francisco office of the State Bar.

54-181 Q3 Board and Management Travel Expenses

It is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approve the third quarter of 2019 Board and Management Travel Expenses in the form this day before the Board, as reviewed by the Audit Committee, for the three months ending September 30, 2019, as certified by the Chief Financial Officer, and on file with the San Francisco office of the State Bar.

100 Reports of Board Committees

110 Board Executive Committee

112 Approval and Ratification of Revisions to State Bar of California Board of Trustees Policy Manual (Board Book) (Steinbrecher) - *withdrawn*

700 MISCELLANEOUS

701 Authority to Extend Retiree Health Benefits and Modify Eligibility Requirements

Presenter: Leah Wilson, Executive Director

It is recommended that the Board of Trustees approve the following resolutions:

RESOLVED, that the Board of Trustees approves Resolution #1, Amendment to the State Bar of California Post-Retirement Welfare Benefits Plan for Executive Staff Employees, as contained in Attachment A; and it is

FURTHER RESOLVED, that the Board of Trustees approves Resolution #2, Delegation of Authority to Request Disbursements, as contained in Attachment B; **and it is**

FURTHER RESOLVED, that the Board of Trustees authorizes staff to modify the plan to offer a vision benefit.

Moved by Broughton, Seconded by Manning.

Motion Passed by Substitution of the Roll

702 Admissions Information Management System (AIMS) - Budget Amendment and Contract Approval

Updated 2017-2022 Strategic Plan Rev. 2: 2.I.

Presenter: Amy Nuñez, Program Director, Office of Admissions

The Finance Committee recommends that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approves a budget amendment to allocate \$725,000 from the Admissions Fund to stabilize and enhance the Admissions Information Management System, which will be paid in fiscal years 2019 and 2020, as described herein; and it is

FURTHER RESOLVED, that the Board of Trustees approves a contract with Slalom Consulting for \$725,000 to perform the work, as described herein.

Moved by Delen, Seconded by Broughton.

Motion Passed by Substitution of the Roll

703 Enterprise Resource Planning System - Budget Amendment and Contract Approval

Updated 2017-2022 Strategic Plan Rev. 2: 3.g.

Presenter: Steve Mazer, Chief of Administration Division

The Finance Committee recommends that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approves an amendment to increase the ERP System project budget by \$390,000, as described herein; and it is

FURTHER RESOLVED, that the Board of Trustees approves contract amendments with Sierra-Cedar (system implementation) for \$207,000; with Tech Diligence Group (project management) for \$79,000; and with Solution Boost (data migration and validation) for \$80,000, as described herein.

Moved by Broughton, Seconded by Delen.

Motion Passed by Substitution of the Roll

704 Fingerprinting Update

Presenters: Dag MacLeod, Chief of Mission Advancement & Accountability Division
Carolina Almarante, Senior Program Analyst, Office of Research & Institutional Accountability

It is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approve the annual fingerprinting schedule of penalties and deadline shown in Table 2 of this report for attorneys in Groups 1-4; and it is

FURTHER RESOLVED, that the Board of Trustees approve the same schedule of penalties and deadline for enrolment of attorneys as involuntarily inactive for future years when active licensee fail to comply with CRC 9.9.5.

Moved by De La Cruz, Seconded by Delen.

Motion Passed by Substitution of the Roll

705 Report on Disparities in the Discipline System

Presenters: Professor George Farkas, UC Irvine
Dag MacLeod, Chief of Mission Advancement & Accountability Division
Ron Pi, Principal Program Analyst, Office of Research & Institutional
Accountability

Informational Only – no action

706 Proposed Amendments to Strategic Plan Objectives: (1) Access and Inclusion Objectives; (2) Due Date for Report from Task Force on Access through Innovation of Legal Services (ATILS); and Planning for the January 2020 Strategic Planning Session

Presenter: Leah Wilson, Executive Director

It is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approve the adjustments to 2017-2022 Strategic Plan objectives outlined in this report.

Moved by Duran, Seconded by Chen.

Ayes: Chen, De La Cruz, Duran, Iglesias, Manning, Perttula, SeLegue

Broughton and Delen were not present for the vote.

ADJOURNED