



# The State Bar of California

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## AGENDA ITEM

### **SEPTEMBER 10 – Open Session Minutes Approval – July 16, 2020, Meeting**

Regular Meeting of the Board of Trustees

The State Bar of California  
Zoom

Thursday, July 16, 2020

9:30 a.m. –

**Time Meeting Called to Order:** 9:52 a.m. [Closed session commenced at 3:15 p.m. and concluded at 3:56 p.m. followed by adjournment of Meeting in Open Session.]

**Time Meeting Adjourned:** 3:59 p.m.

**Chair:** Alan Steinbrecher

**Secretary:** Sarah Cohen

**Members Present:** Mark Broughton, Hailyn Chen, José Cisneros, Sonia Delen, Ruben Duran, Chris Iglesias, Renée LaBran, Debbie Manning, Joshua Perttula, Sean SeLegue, Brandon Stallings

**Members Absent:** Juan De La Cruz

## **OPEN SESSION**

### **Public Comment:**

**Ryan Harrison:** Ryan Harrison, Council on Access and Fairness (COAF) member, delivered remarks prepared by COAF Chair Hon. Brenda Harbin-Forte (ret.) regarding Agenda Item 701 on racial disparities in the discipline system. COAF urges the Board to implement all of the recommendations in the report. COAF believes, however, that the issues addressed in the report are just the tip of the iceberg and that the recommendations should be implemented without delay and further study. As an example of action that could be taken immediately, the presenter urged the Board to implement a rule raising the threshold amount for a trust account overdraft to \$500 before a bank is required to report the overdraft to the State Bar as a

potential ground for discipline. COAF would like the Board to take three actions: (1) appoint a task force to evaluate the entire discipline system and make recommendations for a new more democratic system, including consideration of whether the State Bar Court judges should be governed by an entity independent of the State Bar; (2) remove the State Bar Seal from the State Bar Court to eliminate the appearance that the prosecutor and the judge are playing for the same team; and (3) impose a moratorium on the filing of new disciplinary actions arising out of misdemeanor criminal convictions based on conduct occurring over four years ago that did not involve moral turpitude. Judge Harbin-Forte is aware of a licensee who was convicted of a DUI in 2009 and 2011, sought treatment and became clean and sober. The presenter stated that the old DUIs came to the State Bar's attention only recently due to the fingerprinting requirement and the licensee was asked to either agree to public discipline or face prosecution. According to the presenter, although the State Bar ultimately decided to drop the matter, these matters are embarrassing for licensees and should not be pursued in the first place.

**Aaron S:** Aaron S, who attended a California accredited law school, spoke about his brother being shot twice in the stomach, his father becoming a quadriplegic after being infected with the West Nile virus, and his own brain tumor diagnosis after graduating from law school and getting married. The presenter has taken the bar exam multiple times while dealing with these challenges and has not passed the exam, which has taken a toll on his family financially. The presenter urged the Board to adopt diploma privilege. The presenter has worked in law offices and would be happy to work under attorney supervision.

**Savannah Wadsworth:** Samantha Wadsworth, a bar exam applicant, spoke regarding Agenda Item 704. The presenter commented that even if diploma privilege were established, there is still a need to discuss the future of the bar exam. The presenter raised the issue of accommodations in a pandemic, commenting that applicants needing accommodations should not be singled out to take the exam in-person while other bar exam takers are allowed to take the exam online. Such an accommodation puts at risk the health of people with autoimmune diseases and other health issues. The presenter expressed concern about the artificial intelligence software picking up movements that single out people specifically because of their disabilities.

**Jake Pillard:** Jake Pillard, a recent graduate from University of the Pacific McGeorge School of Law, addressed two agenda items, the ExamSoft contract approval item, which the presenter believes is for the online bar exam, and the potential postponement of the September bar exam. The presenter stressed that exam takers do not enjoy the same testing environments; some have families with small children, some live near construction zones, some do not have a quiet room, and some have roommates. Regarding the potential postponement of the bar exam, the presenter stated that some have quit jobs to study for the bar exam and many are experiencing hardships. The presenter urged the Board to stop moving the goalpost.

**Maya Blasberg:** Maya Blasberg, a recent graduate, seeks clarity on when the bar exam is going to be given. The presenter commented that the State Bar's applicant portal shows that the exam date has been changed to October 5, but as of the day before, the exam was still scheduled for September. The presenter stated that applicants have been left in the dark and

are waiting for an official announcement regarding the postponement of the exam to October. The presenter echoed previous comments about the inequities of a bar exam, advocating for diploma privilege.

**Melinda Murray:** Melinda Murray, president of the California Association of Black Lawyers and deputy district attorney for the County of Los Angeles for over 30 years, addressed Agenda Item 701. The presenter stated that the association represents approximately 6,000 Black lawyers, judges, law professors, and law students and has affiliate chapters in San Diego, Inland Empire, Orange County, Los Angeles, Santa Clara, and the Bay Area. The presenter expressed support for two of the reform measures regarding disproportionate enforcement actions against African American male attorneys. The presenter stated that reform item 1.1 would greatly reduce reportable actions triggered by overdrawn trust accounts, noting that education about financial management is a more equitable solution. The presenter also supports reform item 3.1, noting that the lack of legal representation in the discipline system is a statistically significant predictor of attorney discipline. The presenter believes that the reform measures will promote diversity in the legal profession.

**Unidentified speaker:** The presenter commented on an agenda item regarding COAF's mission to advance the State Bar's diversity and inclusion goals. The presenter focused on a recorded meeting with bar applicants during which students of color and low income students asked for consideration of their hardships. The presenter believes that empathy and compassion were not shown in that students with disabilities requesting a fair and equitable playing field were cut off from speaking. The presenter believes that major access to justice issues are woven into the fabric of the legal profession, and that the Board's commitment to diversity and inclusion are empty promises.

**Pilar Escontrias:** Pilar Escontrias, part of a coalition advocating for diploma privilege, expressed disappointment at how the State Bar has handled the bar exam, and asked three questions: (1) why did the State Bar update its online portal to reflect an October bar exam when the chair had said that the Supreme Court will make the final decision; (2) why won't the Board identify how many individuals are present at the meeting; and (3) what did the Board think about the behavior of the Subcommittee on Examinations at a meeting the day before. The presenter stated that public comment was limited to 15 minutes at that meeting, but presenters were not given 15 minutes. The presenter asserted that careless words were used, and said it was egregious that the committee did not give proper consideration to applicants with disabilities who were present on the call.

**Tom Gordon:** Tom Gordon, Executive Director of Responsive Law, a national organization working to expand access for users of the legal system, expressed support for establishing the Closing the Justice Gap Working Group in Agenda Item 702. The presenter appreciates the diversity of experiences and backgrounds of the proposed members of the working group, but believes that the consumer presence should be expanded. The presenter expressed concern that there are five spots designated for lawyer group representatives and only one spot for consumer group representatives, adding that several of the other positions such as trial judge and legal ethics expert will also be filled by lawyers. The presenter believes that there should be

consumer representatives from different socioeconomic backgrounds, including representatives for seniors, tenants, small business owners, and medium-sized business owners—all of whom use or should be able to use the legal system regularly and whose perspectives would be extremely valuable.

**Banafsheh Akhlaghi:** Banafsheh Akhlaghi, Chair of the Legal Services Trust Fund Commission, spoke about the effort to have the policy side of the Office of Access & Inclusion inform the grant-making side and vice versa, and about how the diversity and inclusion work stewarded by COAF informs all of the work of the Office of Access and Inclusion. The presenter commented that legal services grants are awarded to organizations that employ Black lawyers and lawyers of color who serve people of color, noting that the justice gap study revealed the recruitment and retention challenges faced by these organizations. The presenter observed that the disproportionate number of Black lawyers being disciplined or potentially disbarred compounds the problem of the shrinking pool of legal aid lawyers. The presenter stated that retaining legal aid lawyers of color is important to the State Bar's work in expanding access to and inclusion in the legal system for California's most vulnerable populations.

**Allyssa Scheyer:** Allyssa Scheyer, part of the diploma privilege coalition, asked three questions: (1) how many people are on the call; (2) what is the Board's response to the meeting the day before regarding accommodations; and (3) why has the State Bar updated the online portal to reflect on October bar exam. The presenter also urged the Board to reconsider the contract with ExamSoft, a company that, according to the presenter, cannot deliver on what was promised. The presenter asserted that there are multiple states that will be using ExamSoft software on October 5–6, which will result in tens of thousands of students using the same limited software capacity at the same time. The presenter asserted that technical experts have testified that the exam will be a catastrophic failure. The presenter urged the Board to consider the company's lack of transparency on privacy issues and the discriminatory effect of facial recognition software.

**James Aguirre:** James Aguirre, a former member of the Board of Trustees, former member of the Committee of Bar Examiners, and a practicing lawyer for 40 years, believes that, given the complexities of the administration and grading of the bar exam, the only reasonable approach in the current climate is diploma privilege.

**Haley Cohen:** The presenter believes it unconscionable to limit public comments at yesterday's bar exam accommodations subcommittee meeting to one minute, and atrocious to limit the total public comment period to eight minutes. The presenter received testing accommodations requiring the test to be administered and proctored in-person, but has not received information regarding the specifics since May 4, when the only information communicated was that the exam would be postponed to September. The presenter spoke about financial hardships during the pandemic, forcing the presenter to move home to live with parents who are at high risk and work in high-risk medical fields. The presenter believes it horrifying to risk the presenter's own life and the lives of the presenter's parents and patients by requiring the presenter to sit for an accommodated in-person bar exam. The presenter believes the best case scenario is to take the experimental online paperless and AI proctored exam at home, but

based on rumors about what is flagged as cheating, the presenter believes that the presenter's test taking would be flagged. The presenter believes that administering the bar exam in the midst of an ongoing pandemic is grossly uncomfortable, inequitable and unduly burdensome, and urges that the Board adopt diploma privilege as the only solution.

**Nicole B:** The presenter, a law school graduate, spoke about using ExamSoft throughout law school and how it has failed for many people, and inquired how the company and the State Bar will ensure that the software works when thousands will be using it at the same time. The presenter requested that the Board consider the issues posed by an online exam, and reconsider the ExamSoft contract. The presenter supports diploma privilege.

**Julian Sarkar:** The presenter, an attorney licensed to practice in California and New York, commented on the proposed blue ribbon commission and its intention to create a definition of an entry level attorney, which the presenter claims shows that there is no justification for the bar exam. The presenter stated that the State Bar makes tens of millions of dollars on the bar exam without any factual support that it tests for minimum competence. The presenter, referencing the ExamSoft contract agenda item, requested that the Board disclose its relationships with all commercial business partners in conducting the California bar exam, claiming that in 2017 the Board misrepresented its relationship with Dr. Roger Bolus, the psychometrician. The presenter asserted that it was represented that Dr. Bolus has worked for the State Bar for four years, but the presenter claims it has been 38 years.

**Maryam Sonboli:** The presenter, a 2020 NYU law school graduate, urged the Board not to ratify the ExamSoft contract and to consider the inequities of an online bar exam, including the disparities in the availability of quiet space and the racial inequities posed by AI. The presenter stated that during a California fire season, online exam takers could experience power outages with no notice and that the proposed solution of a telephone hotline does not address the reality that phones will likely not be permitted in the exam room. The presenter supports diploma privilege as the only equitable solution.

**Jackie Nicole:** The presenter, while supporting diploma privilege, urges the Board to consider issues relating to security and scratch paper for a remote performance test. The presenter suggests an open note exam to level the playing field and eliminate security issues. The presenter noted that there was no opportunity to speak at yesterday's bar exam accommodations subcommittee meeting, and wanted to say that there is a wide range of medical issues that make people with disabilities more vulnerable to the complications of the novel corona virus. In remission from thyroid cancer, the presenter said that it would be difficult to sit for an in-person exam and that an in-person accommodated exam is discriminatory. The presenter stated that a remote exam should be made available for all test takers including those requiring accommodations for disabilities.

**Esfeh:** The presenter, who has asthma and lives with two toddlers and elderly grandparents, requested that accommodation options include a remote exam or, if in-person, a private room or something that reduces the risks.

**Britteny Leyva:** The presenter supports diploma privilege and commented on reports about the discriminatory nature of artificial intelligence. The presenter urged the Board to read the ACLU report and a study conducted by MIT related to the utilization of artificial intelligence. The presenter also commented on the contract, asking what will happen with the biometric information collected from test takers after the exam is administered.

**Jake O'Neal:** The presenter, commenting on the change in date for the bar exam and the proposed ratification of a three million dollar contract with ExamSoft, believes the Board has succeeded in forcing an online bar exam in October. The presenter asked whether the Board has plans for defending lawsuits the presenter believes the Board is likely to face, citing intentional and negligent infliction of emotional distress as bases.

**Octavia:** The presenter expressed discomfort and anxiety with the idea of AI technology being used during the exam, believing that a robot looking into apartments collecting and using data violates privacy rights. The presenter stated that this technology is discriminatory against, and presents complications for, Black applicants, and would like an explanation of what mitigation measures will be taken.

**Juan Manuel Suero:** The presenter, an attorney in practice for 27 years, raised the issue whether the bar exam determines the competence of lawyers and encouraged the Board to seek all options to protect the consumers.

**Hani Habbas:** The presenter commented on technical errors with an online exam, including the availability of a hotline but the restriction on having phones in the exam room. The presenter expressed concern that that hotline will be overloaded with thousands of calls at the same time. The presenter was not necessarily advocating for diploma privilege as the way to become licensed and expressed a willingness to go one way or the other, but after having put in more than 300 hours in bar exam study time, would like the opportunity to practice with the ExamSoft software before taking the exam.

**Bacilio Mendez II:** The presenter, whose post-bar employment offer was rescinded, has a partner who works as a nurse at St. Francis Hospital and, because of the partner's employment, can buy food, make rent, enjoy a stable internet connection, and afford a bar prep course. The presenter expressed concern about the next phase of reopening in San Francisco given that the infection numbers are not getting better and is worried about the exposure faced by the partner and the partner's colleagues daily. The presenter asked the Board to take the advice offered by the law school deans and consider diploma privilege, with guardrails if necessary, as the only humane option for applicants. The presenter said that many friends were not born in this country and are facing deportation, the timing of which is impacted by the delay in exam administration, receipt of exam results and ability to seek employment.

**Victor Lopez:** The presenter, a recent law school graduate who works from home and is a single father with full custody of two kids (one of whom homeschooled since March), stated that it is extremely hard to focus on studying. The presenter stated it took six years to graduate, knows

what hard work looks like, and is not one to shy away from it; the presenter wanted to share this story.

**Whitney Thompson:** The presenter supports diploma privilege, but in the event of a remote exam would like the Board to consider an open note or open book exam. The presenter stated that the practice of law is open book, and an open book exam will alleviate concerns about security, discrimination and being flagged by the AI software for cheating. As a student with testing accommodations, the presenter hopes not to put life at risk by having to take the test in person while everyone else is allowed to take the exam remotely, and urges the Board to consider everyone's health.

**Beth Patel:** The presenter urges the Board to advocate for diploma privilege. The presenter questions whether the bar exam is a measure of competence, believing that no competent attorney would ever rely on what they memorized for the bar exam in representing a client. The presenter stated that the bar exam has a disparate impact on people of color and especially Black applicants. The presenter believes that neither the Committee of Bar Examiners nor the California Supreme Court can ensure that the exam will be standard if taken at home.

**Matt Chipman:** The presenter noted that there were five people wishing to give public comment who have not been able to talk because they had internet connection issues or were unable to unmute. The presenter believes these are people who might fail the bar exam because of internet connection issues, and not because of what they know. The presenter urged the Board to not ratify the contract with ExamSoft and consider diploma privilege with guardrails and supervised practice.

**Betsy Crowder:** The presenter supports diploma privilege, but in the event of a bar exam believes that a remote exam is discriminatory. The presenter believes that taking a test without scratch paper is impossible, and that some applicants will have access to computers that work like tablets with the capacity to underline and highlight whereas other applicants will not, giving the former a big advantage.

#### **End of Public Comment**

#### **10 MINUTES**

#### **Open Session Minutes–May 14, 2020**

Adoption of Open Session Minutes – Moved by Manning, seconded by Cisneros.

Ayes – Broughton, Chen, Cisneros, Delen, Duran, Iglesias, LaBran, Manning, Perttula, SeLegue, Stallings

Noes – n/a

***Motion carries.***

### **30 CHAIR'S REPORT – *oral***

### **40 STAFF REPORTS**

#### **41 Executive Director**

##### **1. Report from Executive Director – *informational***

**50 CONSENT** – All items on the consent calendar except 50-2, 50-8, 54-111, and 54-117, were approved by unanimous consent. Agenda items 50-2, 50-8, 54-111, and 54-117 were pulled from the consent calendar.

#### **50-1 Approval of Specified Contracts Pursuant to Business and Professions Code Section 6008.6**

- 1. For Online Legal Research, with: Lexis Nexis**
- 2. For Interim Information Technology Director, with: Eduardo Frias**
- 3. For Program Management Consulting Services, with: Brian Richart**
- 4. For Legal Specialization Examination, with: Christopher Frick**
- 5. For Legal Specialization Examination, with: Dennis Peter Maio**
- 6. For Legal Specialization Examination, with: Laura Meyers**
- 7. For Legal Aid Community Facilitation & Coordination, with: Legal Aid Association of California**

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

#### **50-3 Approval of Revisions to Rules and Regulations Pertaining to the Employment of Executive Staff Employees and Rules and Regulations Pertaining to the Employment of Confidential Staff Employees**

**RESOLVED**, that the Board of Trustees adopt the amended Rules and Regulations Pertaining to the Employment of Executive Staff Employees and the amended Rules and Regulations Pertaining to the Employment of Confidential Staff Employees, as set forth above.

#### **50-4 Approval of Revisions to Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms, and Conditions Governing State Bar Court Judge Service**

**RESOLVED**, that the Board of Trustees adopt the amended Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service, as set forth above and in Attachment A.



## **50-5 Receipt and Filing of 2016 Judicial Diversity Summit Report**

**Updated 2017-2022 Strategic Plan Rev. 3 : 4.o.**

**RESOLVED**, that the Board of Trustees receives and files the 2016 Judicial Diversity Summit Report; and it is

**FURTHER RESOLVED**, that the Board of Trustees refers the 2016 Judicial Diversity Summit Report to the Council on Access and Fairness for its review and recommendations, consistent with its charge and amended work plan.

## **50-6 Annual Recommendation to the Supreme Court of California for Suspension of Licensee Fees, Penalties, or Costs**

**RESOLVED**, that the Board of Trustees forward to the Supreme Court of California the names of those licensees to be suspended from the practice of law in California for failing to pay State Bar fees, penalties, or costs on or before September 30, 2020, and hereby:

(a) finds that State Bar staff performed the ministerial functions for determining that each person who is to be recommended to the Supreme Court of California for suspension due to nonpayment of fees is licensed by the State Bar of California;

(b) concludes that State Bar staff determined that each such person failed to fully pay fees, penalties, or costs as established pursuant to the provision of sections 6086.10, 6140, 6140.5(c), 6140.55, 6140.6, 6140.7, 6140.9 and 6141 of the Business and Professions Code;

(c) ascertains that State Bar staff have sent to each such person, at their address of record with the State Bar of California, two months' written notice of their delinquency which included notice of section 6143 of the Business and Professions Code;

(d) and recommends to the Supreme Court of California that each such person's State Bar license be suspended, which would suspend them from the practice of law in the State of California, effective October 1, 2020, until such time as they may be reinstated, upon the payment of the delinquent fees, penalties, or costs and of such additional fees, penalties, or costs as may have accrued at the time of such payment; and it is

**FURTHER RESOLVED**, that for the purpose of withdrawing the foregoing recommendation for suspension in particular cases, State Bar staff is authorized and directed to notify the Clerk of the Supreme Court of California of the name of any licensee of the State Bar who by proper remittance and prior to the effective date of the Supreme Court of California order of suspension based hereon, pays to the State Bar fees, penalties, or costs in the amount in which they are delinquent; and to notify the Clerk of the Supreme Court of California of the consequent withdrawal of the Board of Trustees' recommendation for suspension; and it is

**FURTHER RESOLVED**, that for the purpose of modifying the recommendation to the Supreme Court of California for suspension for nonpayment of fees, penalties, or costs, State Bar staff is authorized and directed to change the data as to status or the amounts of delinquency of any licensee and to notify the Clerk of the Supreme Court of California accordingly of the consequent modification of the Board of Trustees' recommendation for suspension.

**50-7 Annual Recommendation Regarding Licensees not in Compliance with Minimum Continuing Legal Education (MCLE) Requirement**

**RESOLVED**, pursuant to California Rule of Court 9.31 and the Rules of the State Bar, that the Board of Trustees hereby authorizes that those attorneys in MCLE Compliance Groups 1, 2 and 3 who do not bring themselves into compliance with their MCLE requirements by September 30, 2020, be enrolled as inactive and placed on "Not Eligible to Practice" status, effective October 1, 2020; and it is

**FURTHER RESOLVED**, that the Board of Trustees hereby authorizes staff to remove individual attorneys from inactive status once they have provided proof of compliance and paid all noncompliance fees.

**54-111 Commission on Judicial Nominees Evaluation - Annual Appointment of Officers, Members and Alternates**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, appoints Stella Ngai to serve as the Chair of the 2021 Commission on Judicial Nominees Evaluation (JNE) and Alana D. Arcurio to serve as the Vice-Chair of the 2021 JNE Commission, each for a one-year term commencing at the close of the last business meeting of the 2020 JNE Commission on April 24, 2021, and expiring at the close of the last business meeting of the 2021 JNE Commission on April 23, 2022, or until further order of the Board of Trustees, whichever occurs earlier; and it is

**FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, reappoints the current members of the Commission on Judicial Nominees Evaluation (JNE) to the 2021 JNE Commission per Attachment C; each for a one-year term commencing at the close of the last business meeting of the 2020 JNE Commission on April 24, 2021, and expiring at the close of the last business meeting of the 2021 JNE Commission on April 23, 2022, or until further order of the Board of Trustees, whichever occurs earlier; and it is

**FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, appoints new members and alternates to the 2021 Commission on Judicial Nominees Evaluation (JNE) per Attachment C; each for a one-year term commencing upon administration of the oath of office at the January 15<sup>th</sup> 2021, orientation meeting, and

expiring at the close of the last business meeting of the 2021 JNE Commission on April 23, 2022, or until further order of the Board of Trustees, whichever occurs earlier.

**54-112 Review Committee of the Commission on Judicial Nominees Evaluation - Annual Appointment of Officer and Extension of Terms of Members**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee appoints Angelique Bonanno as Chair of the Review Committee of the Commission on Judicial Nominees Evaluation, for a one-year term, commencing at the close of the September 2020 meeting of the Board of Trustees, and expiring at the close of the September 2021 meeting of the Board of Trustees, or until further order of the Board of Trustees, whichever occurs earlier; and it is

**FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, extends the three-year terms of David George, Angelique Bonanno and Jody Nuñez to four years, with the terms of David George and Angelique Bonanno expiring at the close of the September 2022 meeting of the Board of Trustees, and the term of Jody Nuñez expiring at the close of the September 2023 meeting of the Board of Trustees, or until further order of the Board of Trustees, whichever occurs earlier.

**54-113 Judicial Council of California - Withdrawal of Appointment and Appointment of Member**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, withdraw the appointment of David Fu and reappoint Gretchen Nelson to the Judicial Council for a three-year term to commence on September 15, 2020, and to expire on September 14, 2023, or until further order of the Board, whichever occurs earlier.

**54-114 Legal Services Trust Fund Commission - Annual Appointment of Officers and Members**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, approves the reappointment of Amin Al-Sarraf and Eric Isken, each as an attorney member, for one four-year term, and the appointment of Catherine Blakemore as an attorney member filling a vacancy due to resignation to serve out the remainder of the existing term (through September 2022); and it is

**FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, approves the reappointments of Banafsheh Akhlaghi as Chair and Eric Isken as Vice-Chair of the Legal Services Trust Fund Commission for one-year terms commencing at the close of the September 2020 meeting of the Board of Trustees and expiring at the close of September 2021 meeting of the Board of Trustees.

#### **54-115 Council on Access and Fairness - Annual Appointment of Officers and Members**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, approves the appointment of Novella Coleman, Sarah Good, Michael Rhoads, Chalak Richards, and Stephanie Santoro as COAF members for one, four-year term to commence at the close of the September 2020 meeting of the Board of Trustees, and expiring at the close of the September 2024 meeting of the Board of Trustees; and it is

**FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, extends the term of Judge Esther P. Kim for one year, and approves the appointment of Judge Esther P. Kim as the Chair and Ryan Harrison as the Vice-Chair of COAF for the 2020-2021 term, commencing at the close of the September 2020 meeting of the Board of Trustees, and expiring at the close of the September 2021 meeting of the Board of Trustees.

#### **54-116 California Rural Legal Assistance - Appointment to Serve on Board of Directors**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, appoints the following representatives to the Board of Directors of California Rural Legal Assistance for a three-year term effective at the close of the July 2020 Board meeting through July 2023: Michael Bracamontes, Peter Carson, and Nicole Philips; and it is

**FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, reappoints the following representatives to the Board of Directors of California Rural Legal Assistance for a three-year term, effective at the close of the July 2020 Board meeting through July 2023: Alejandro Delgado, Anthony LoPresti, David Martinez, Camille Pannu, and Jacq Wilson.

#### **54-118 Client Security Fund Commission - Annual Appointment of Officers and Members**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, approves the recommended appointments for members and officers of the Client Security Fund Commission.

#### **54-119 California Board of Legal Specialization - Annual Appointment of Officers and Members**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, appoint Robert Hershenson and reappoint Mark A. Lester as Chair and Vice-Chair, respectively, to the California Board of Legal Specialization, each for a one-year term effective at the start of the 2020–2021 State Bar year; and it is

**FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, appoint Jake Yoon to the California Board of Legal Specialization as member for a four-year term effective at the start of the 2020–2021 State Bar year.

**54-121 Amendments to Rules 3.513(F) and 3.550(E)(2) of the Rules of the State Bar of California (Electronic Service of Process and Videoconference Appearances in Fee Arbitration Proceedings) - Return from Public Comment and Request for Approval**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Regulation and Discipline Committee, approves the proposed amendments to Rules 3.513 and 3.540 of the Rules of the State Bar of California and Rules 27.3-27.4 of the State Bar of California Model Rules of Procedure for Fee Arbitrations as set forth in Attachments A, B, and C respectively.

**54-122 Amended Interim Rule of Procedure 5.26.1 (Electronic Service of Process in State Bar Court Proceedings) - Request for Approval**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Regulation and Discipline Committee, having determined pursuant to Rule 1.10(C) of the Rules of the State Bar of California that an emergency justifies immediate enactment of this interim measure without public comment, hereby enacts amended interim Rule 5.26.1 of the Rules of Procedure as set forth in Attachment A.

**54-123 Proposed Amended Rules of Professional Conduct 1.1 and 5.4 - Return from Public Comment and Request for Adoption of Rule 1.1 and Additional Public Comment for Rule 5.4**

**Updated 2017-2022 Strategic Plan Rev. 3 : 4.d.**

**RESOLVED**, that upon recommendation of the Regulation and Discipline Committee, the Board of Trustees adopts amendments to Rule of Professional Conduct 1.1 as set forth in Attachment A; and it is

**FURTHER RESOLVED**, that staff is directed to submit the amended rules to the Supreme Court of California with a request that the rules be approved.

**54-141 Licensee Requests for Adjustment of Fees, Penalties and Charges**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Finance Committee approves the fee adjustments for the State Bar licensees as presented this day, and on file in the San Francisco office of the State Bar.

## **CONSENT CALENDAR APPROVAL**

Moved by Stallings, seconded by Cisneros.

Ayes – Broughton, Chen, Cisneros, Delen, Duran, Iglesias, LaBran, Manning, Perttula, SeLegue, Stallings

Noes – n/a

***Motion carries.***

## **PULLED FROM CONSENT**

### **50-2 Report of Action Taken by Executive Director Approving Specified Contracts Pursuant to Business and Professions Code Section 6008.6**

- 1. For Examination Laptop Licenses, with: ExamSoft Worldwide, Inc.**
- 2. For Enhancements to the Odyssey Case Management System, with: Polyrific, LLC**
- 3. For Desktop / Laptop Refresh Project, with: Insight Public Sector**

**WHEREAS**, the contracts listed herein required execution before the next regularly scheduled meeting of the Board of Trustees; and

**WHEREAS**, on June 24, 2020, the executive director, after consultation with and approval by the designated committee for advising the executive director on such matters, approved said contracts; it is hereby

**RESOLVED**, that the Board of Trustees affirms the action taken by the executive director on behalf of the Board.

Moved by Duran, seconded by Delen.

Ayes – Broughton, Chen, Cisneros, Delen, Duran, Iglesias, LaBran, Manning, Perttula, SeLegue

Noes – n/a

Recused – Stallings

***Motion carries.***

## **50-8 California Paraprofessional Program Working Group - Appointment of Members**

**Updated 2017-2022 Strategic Plan Rev. 3 : 4.f.**

**RESOLVED**, that the Board of Trustees authorize the Chair of the California Paraprofessional Program Working Group to appoint members to fill the remaining two vacancies on the CPPWG.

Moved by Stallings, seconded by Duran.

Ayes – Broughton, Chen, Cisneros, Delen, Duran, Iglesias, Manning, Perttula, SeLegue, Stallings

Noes – n/a

Recused – LaBran

***Motion carries.***

## **54-111 Commission on Judicial Nominees Evaluation - Annual Appointment of Officers, Members and Alternates**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, appoints Stella Ngai to serve as the Chair of the 2021 Commission on Judicial Nominees Evaluation (JNE) and Alana D. Arcurio to serve as the Vice-Chair of the 2021 JNE Commission, each for a one-year term commencing at the close of the last business meeting of the 2020 JNE Commission on April 24, 2021, and expiring at the close of the last business meeting of the 2021 JNE Commission on April 23, 2022, or until further order of the Board of Trustees, whichever occurs earlier; and it is

**FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, reappoints the current members of the Commission on Judicial Nominees Evaluation (JNE) to the 2021 JNE Commission per Attachment C; each for a one-year term commencing at the close of the last business meeting of the 2020 JNE Commission on April 24, 2021, and expiring at the close of the last business meeting of the 2021 JNE Commission on April 23, 2022, or until further order of the Board of Trustees, whichever occurs earlier; and it is

**FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, appoints new members and alternates to the 2021 Commission on Judicial Nominees Evaluation (JNE) per Attachment C; each for a one-year term commencing upon administration of the oath of office at the January 15<sup>th</sup> 2021, orientation meeting, and expiring at the close of the last business meeting of the 2021 JNE Commission on April 23, 2022, or until further order of the Board of Trustees, whichever occurs earlier.

Moved by Manning, seconded by Broughton.

Ayes – Broughton, Chen, Cisneros, Delen, Duran, Iglesias, LaBran, Manning, Perttula, SeLegue

Noes – n/a

Recused – Stallings

***Motion carries.***

**54-117 Committee on Professional Responsibility and Conduct - Annual Appointment of Officers and Members**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee approve the appointment of the following new members, officers, and special advisor to serve on the Committee of Professional Responsibility and Conduct beginning in the 2020–2021 committee year:

**Officers**

Dena Roche, Chair

Justin Fields, Vice-Chair

**Member Appointments**

Seth Flagsberg

Kyla Rowe

Hunter Starr

**Special Advisor**

Stephen Bundy

**Alternate Member Appointments**

Joel Mark

Jeffrey Aaron

Michael Yraceburn

Moved by Manning, seconded by Broughton.

Ayes – Broughton, Chen, Cisneros, Delen, Duran, Iglesias, LaBran, Manning, Perttula, SeLegue

Noes – n/a

Recused – Stallings

***Motion carries.***



## 100 REPORTS OF BOARD COMMITTEES

**The committee member presenter is presumed to be the “mover” of the recommended action; no second is required because the motion is being brought by the committee.**

### 110 Board Executive Committee

#### 119.1 Approval of Addition to Legislative Priorities

**Presenter/Mover:** Alan Steinbrecher, Board Executive Committee, Chair

**RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee approve the addition to the State Bar’s 2020 legislative priorities included in this item.

Ayes – Broughton, Cisneros, Delen, Duran, Iglesias, LaBran, Manning, Perttula, SeLegue

Noes – n/a

Absent for vote – Chen

***Motion carries.***

### 120 Regulation and Discipline Committee

#### 124 Consideration of Attorney Self-Assessment Models

**Presenter/Mover:** Brandon Stallings, Regulation & Attorney Discipline Committee, Chair

**Updated 2017-2022 Strategic Plan Rev. 3 : 2.e.**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Regulation and Discipline Committee, approves the staff-recommended model of a self-assessment program and authorizes development of an implementation plan for that model with client trust accounting as the first topic; and it is

**FURTHER RESOLVED**, that a staff working group led by representatives of the Office of the Chief Trial Counsel and the Office of Professional Competence should be convened as needed to develop the subject matter for future topics to be included in the self-assessment program, in consultation with the leadership of the Regulation and Discipline Committee.

Ayes – Broughton, Chen, Cisneros, Delen, Duran, Iglesias, LaBran, Manning, Perttula, SeLegue

Noes – n/a

***Motion carries.***

## 700 MISCELLANEOUS

### 701 Consideration of Recommendations to Implement Changes to Address Key Findings of the Disparities in the Discipline System Study

**Presenters:** Chris Robertson, James E. Rogers College of Law, Professor  
Dag MacLeod, Mission Advancement & Accountability Division, Chief

**RESOLVED**, that the Board of Trustees directs staff to develop plans to implement reforms 3.1, 3.2, and 3.3, specifically to:

1. Develop a metric and begin regular reporting of data on representation by respondent attorneys;
2. Pilot test different messages to respondent attorneys regarding the value of representation by counsel in attorney disciplinary proceedings and evaluate the most effective method of encouraging representation; and
3. Begin discussions with Attorney Discipline Defense Counsel representatives to develop and distribute a roster of attorneys who could provide low-cost and pro bono case evaluations to respondent attorneys.

First Resolution moved by Stallings, seconded by Duran.

Ayes – Broughton, Cisneros, Delen, Duran, Iglesias, LaBran, Manning, Perttula, SeLegue, Stallings

Noes – n/a

Absent for Vote – Chen

***Motion carries.***

**FURTHER RESOLVED**, that the Board of Trustees directs State Bar staff to evaluate reforms [and work with the leadership of the Regulation & Discipline Committee \(RAD\) and the Board of Trustees on the implementation of recommendations](#) 1.1 and 2.3, specifically:

1. Evaluate RA-Bank matters to understand the impact on public protection of modifying the *de minimus* threshold for closing RA-Bank matters. Specifically, staff should evaluate:
  - a. The volume of RA-Bank matters organized by the amount of the over-draft.
  - b. Whether low-level RA-Bank matters are useful as predictors of subsequent malfeasance related to client trust accounts or other misconduct.

- c. Whether modifications of State Bar rules to allow for attorneys to place a specified amount of money in a trust account would have any impact on the incidence of over-drafts from client trust accounts.

2. The Office of Chief Trial Counsel should evaluate the results found in Item one as soon as possible, adopt an interim reform as the results might support and bring the results of the investigation and interim reform to the Board for further consideration at its next meeting.

3. Evaluate complaints closed without discipline to determine whether specific issues can be identified that allow for proactive regulation.

~~2.4.~~ The Office of Chief Trial Counsel should implement an interim reform that prior, closed complaints more than five-years old should not ordinarily be considered in evaluating and investigating a new complaint, with exceptions permitted based on a written showing to an attorney at the level of Assistant Chief Trial Counsel or higher within the Office of Chief Trial Counsel. Prior closed complaints for purposes of this resolution do not include those resolved with a warning letter, directional letter, resource letter or agreement in lieu of discipline.

Second Resolution, with Member SeLeague's two friendly amendments (sections 2 and 4) and Member Duran's one friendly amendment (introductory language) to the staff resolution, moved by Delen, seconded by Stallings.

Ayes – Broughton, Cisneros, Delen, Duran, Iglesias, LaBran, Manning, Perttula, SeLeague, Stallings

Noes – n/a

Absent for Vote – Chen

***Motion carries.***

## **702 Closing the Justice Gap Working Group - Approval of Proposed Charter and Composition**

**Updated 2017-2022 Strategic Plan Rev. 3 : 4.d.**

**Presenter:** Randy Difuntorum, Office of Professional Competence, Program Director

**RESOLVED**, that the Board of Trustees adopts the charter for the Working Group on Closing the Justice Gap in the form attached to these minutes; and it is

**FURTHER RESOLVED**, that the Board of Trustees directs staff to carry out appointment outreach and an application process to be completed in time for the appointment of the working group at the Board's September 24–25, 2020 meeting.

Moved by Cisneros, seconded by Manning.

Ayes – Broughton, Chen, Cisneros, Delen, Duran, Iglesias, Manning, Perttula, SeLegue, Stallings

Noes – n/a

Recused – LaBran

***Motion carries.***

**703 Approval of Proposed Interest on Lawyers Trust Account (IOLTA) Grant Distribution for 2021 and Review of Planned Distribution for 2020**

**Updated 2017-2022 Strategic Plan Rev. 3 : 4.a.**

**Presenter:** Banafsheh Akhlaghi, Legal Services Trust Fund Commission, Chair  
Doan Nguyen, Office of Access & Inclusion, Program Supervisor

**RESOLVED**, that the Board of Trustees maintains the 2020 IOLTA distribution at \$55,294,144,<sup>1</sup> leaving net assets in the amount of \$19,684,821 (projected); and it is

**FURTHER RESOLVED**, that the Board of Trustees approves the 2021 IOLTA distribution in the amount of \$23,546,275, with a projected reserve of \$8,170,928 at the end of 2021; and it is

**FURTHER RESOLVED**, if changes to the Equal Access Fund or other funding sources occur, impacting IOLTA-funded grantees, the Board of Trustees will delegate authority to the Legal Services Trust Fund Commission to determine whether increases or decreases to the 2020 and/or 2021 IOLTA distributions are appropriate.

Moved by Manning, seconded by Iglesias.

Ayes – Broughton, Chen, Cisneros, Delen, Duran, Iglesias, Manning, Perttula, SeLegue, Stallings

Noes – n/a

Recused – LaBran

***Motion carries.***

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<sup>1</sup> The amount the Board of Trustees initially approved for distribution in 2020 was \$55.5 million. However, due to changes in eligibility for some organizations in the ensuing months, the commission made adjustments to the distribution, leading to \$55.3 million.

**704 Supreme Court / State Bar Blue Ribbon Commission on the Future of the Bar Examination - Approval of Proposed Charter and Composition (Lisa Chavez)**

**Updated 2017-2022 Strategic Plan Rev. 3 : 2.n.**

**Presenter:** Lisa Chavez, Office of Research & Institutional Accountability, Program Director

**RESOLVED**, that the Board of Trustees adopts the charter for the new Blue Ribbon Commission on the Future of the Bar Exam, as set forth in Attachment A, [as amended](#), and directs staff to finalize the Charter in consultation with the Supreme Court; and it is

**FURTHER RESOLVED**, that upon finalization of the Charter, the Board of Trustees directs State Bar staff to solicit nominations for the Blue Ribbon Commission to be appointed by the Supreme Court from the categories of stakeholders listed in Attachment A; and it is

**FURTHER RESOLVED**, that the Commission will begin its work in the fall of 2020 and present a final report on its findings and recommendations no later than June 30, 2022, with periodic status updates to be provided to the State Bar Board of Trustees.

Moved, as amended, by Cisneros, seconded by Stallings.

Ayes – Broughton, Chen, Cisneros, Duran, Iglesias, LaBran, Manning, Perttula, SeLegue, Stallings

Noes – n/a

Recused - Delen

***Motion carries.***

**705 Consideration of Issues Related to the Postponement of the July 2020 Bar Examination**

**Presenter:** Donna Hershkowitz, Interim Executive Director

**RESOLVED**, that, in anticipation that the Supreme Court will imminently issue its direction to the State Bar regarding plans for licensure for attorneys in the fall of 2020, and that quick and decisive action will need to be taken to implement that direction, the Board of Trustees appoints Josh Perttula to work with staff on efforts related to an online bar exam, if any, and Hailyn Chen to lead implementation efforts related to any other direction the Supreme Court may provide; and it is

**FURTHER RESOLVED**, that the Board of Trustees delegates to Hailyn Chen the authority to appoint a working group or take other steps necessary to implement the direction of the Supreme Court.

Moved by Perttula, seconded by Cisneros.

Ayes – Broughton, Chen, Cisneros, Duran, Iglesias, LaBran, Manning, Perttula, SeLegue

Noes – n/a

Recused – Delen, Stallings

***Motion carries.***