

## **AGENDA ITEM**

**JULY 10 - Board of Trustees – May 11, 2012 Minutes**

### **THE STATE BAR OF CALIFORNIA**

#### **MINUTES**

#### **BOARD OF TRUSTEES MEETING**

#### **SAN FRANCISCO, CALIFORNIA**

**FRIDAY, May 11, 2012**

The Board of Trustees of The State Bar of California convened at 9:10 a.m. in open session in the Board Room of the State Bar's San Francisco offices, 180 Howard Street, San Francisco, California, 94105, on Friday, May 11, 2012, Jon B. Streeter presiding.

The following members of the Board of Trustees were present: Lowell Carruth, Alec Y. Chang, George O. Davis, Samson Elsbernd, Jeannine English, Nancy Fineman, Clark Gehlbach, Karen Goodman, Cheryl L. Hicks, Craig Holden, Patrick M. Kelly, Wells Lyman, Dennis Mangers, Pearl Mann, Gwen Moore, Luis J. Rodriguez, Heather Linn Rosing and Mark Shem.

The following members of staff were present: Starr Babcock, Saul Bercovitch, Resty Buenavidez, Laila Bartlett, Randy Difuntorum, Joseph Dunn, Dina DiLoreto, Mary Lavery Flynn, James Fox, Francisco Gomez, Teri Greenman, Robert A. Hawley, Jayne Kim, Gayle Murphy, Sonja Oehler, Cathy Torney, Peggy Van Horn, Colin Wong and Larry Yee.

Also present for portions of the meeting: Jennifer Wada

The roll-call vote was taken, and upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the roll-call vote will be substituted for the vote unless otherwise noted.

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

RESOLVED, that the minutes of the regular meeting of the Board of Trustees held on Friday, March 2, 2012 in Los Angeles, California, hereby are approved as written; and it is

FURTHER RESOLVED, that the minutes of the special meeting of the Board of Trustees held on Monday, April 9, 2012 in San Francisco, California, hereby are approved as written.

All members listed on the slip voted yes except Cheryl Hicks and Gwen Moore who had left the meeting.

- 30 The President reported that the issue looming before us has been the judicial branch court funding crisis. The Open Courts Coalition has been advocating for better court funding and the Chief Justice has expressed gratitude.

Mr. Streeter advised that a few days before, the Open Courts Coalition received a preliminary report on the governor's budget with an additional three hundred and fifty million dollars deficit for years 2012 and 2013. Mr. Streeter stated that there had been some cautious optimism, but that the advance word on the revised budget was that it would be worse for the Judicial Branch, consequently, the President wanted to alert the Board of Trustees regarding the new level of crisis.

Mr. Streeter stated his hope that going forward in the coming year that the Board of Trustees would continue to take a leadership role in court funding.

President Streeter advised that he had appeared in Sacramento to testify with judges and others regarding court funding which gathered a lot of press attention.

A rally had been held in San Francisco and he expressed gratitude to the Bar Association of San Francisco for organizing it and garnering great press. Mr. Streeter was gratified by the turn out and level of involvement.

Mr. Streeter advised that after court funding, the second issue taking his time has been finalizing the Task Force on Admissions Regulation Reform and the proposed requirement for practical skills training, which has received a lot of public attention. Mr. Streeter advised that he had developed a list of twenty-one members who represented a cross section of the legal profession. The President announced the names of the members of the Task Force (MAY 30-1 attached) and stated that there were only so many appointments to be made, but that the public hearings would provide plenty of occasions for others to provide input.

Mr. Streeter reported that the Task Force on Discipline Metrics and Monitoring concluded its work and expressed his appreciation to Luis Rodriguez. He noted that Chief Trial Counsel, Jayne Kim, had commented that it was just the beginning and that this is a foundation for future Boards.

Mr. Streeter stated that the fee bill is the most significant legislative development – it passed a milestone in recent weeks; made it out of committee without amendment and passed in the assembly. He acknowledged that this is an indication that the level of confidence concerning the State Bar has improved. The bill analysis, however, raises matters related to transparency, which will be addressed going forward. Mr. Streeter stated that the State Bar will directly address the concerns raised in the Assembly bill analysis.

Mr. Streeter announced that Jayne Kim is up for confirmation as Chief Trial Counsel and that the process to move to Senate Confirmation is underway and expects the confirmation to be completed successfully.

He reported that he had visited county bars throughout the state, Fresno, Orange and Santa Barbara, to spread the word amongst the membership about court funding, the Task Force on Admissions Regulation Reform and progress on the State Bar Discipline system.

Mr. Streeter advised that he had continued the monthly phone calls with Presidents of the local bars. Sixty to eighty Presidents have participated each month and there is a strong desire to know what the State Bar Board of Trustees is doing.

Mr. Streeter announced that going forward, Board Committee and Board meetings would be scheduled as was done in May, with committees meeting scheduled on Thursday and the full Board meeting on Friday morning. This would allow the Board to conclude business early on Friday and consequently facilitates travel for the Trustees.

41/42 Mr. Dunn introduced Victoria Henley, Director-Chief Counsel of the Commission on Judicial Performance, and Janice Brickley, the Legal Advisor to the Commission. Ms. Henley oversees the intake and investigation of complaints of judicial misconduct and judicial incapacity and for disciplining judges. Ms. Henley has served as Director-Chief Counsel since 1991.

Ms. Henley described the work of the Commission and answered questions from the Board of Trustees.

Mr. Dunn spoke about complaint calls from members to the Board of Trustees regarding member billing fee statement deadlines, Admissions issues, etc. He asked that Trustees forward these contacts to staff for handling. Mr. Dunn explained that staff handles these calls every day, and that there is a small percentage of complainants who are simply “venting” about the process.

Mr. Dunn advised that beginning on June 1, 2012, all of the documents on the State Bar's website that are not accessible to persons with disabilities will be removed from the State Bar's website until they have been remediated.

Mr. Dunn asked John Chiappetta, Budget Director, to describe the approach to the internal “micro-reorg” process. Mr. Chiappetta explained that the micro-reorg would consist of four phases: Phase 1: would serve to identify current departmental activities and processes; Phase 2: would map the current processes; Phase 3: would identify and prioritize improvements; and Phase 4: would be improvement implementation.

Mr. Chiappetta explained that the Office of Admissions would be an “early adopter” followed by the all other major operational - Discipline (OCTC, Probation, Client Security Fund); Education; Legal Services; and Member Records / Member Billing.

Mr. Chiappetta stated his hope to complete Phase 1 for all of the major operating areas by July and the next focus would be the discipline system, to be coordinated with new case management system. Mr. Chiappetta stated that by year end, guided by IT system implementation schedule, Phases 1 and 2 should be complete Bar-wide with the Discipline system well into Phase 4 and the Admissions and Member Billing / Member Records in Phase 3.

Mr. Dunn asked the State Bar’s Chief Financial Officer, Peggy Van Horn, to report on several external unsuccessful fraudulent attempts to access monies in the State Bar’s Wells Fargo checking account. Ms. Van Horn reported that the State Bar had incurred no losses and that the State Bar’s internal controls had been shown to be rigorous and reliable.

Mr. Dunn presented Jennifer Wada, the State Bar’s Legislative Advocate, who spoke about the following bills of interest to the State Bar: AB 1631 – Out of State Attorney Arbitration Counsel; AB 1865 – Eviction Notices; AB 1950 – Loan Modification; AB 2025 – Evidence: Admissibility; AB 2122 – Standardized Testing: Reasonable Accommodations; AB 2685 – State Bar Fee Bill; SB 980 – Loan Modification; SB 988 – Wards: Attorney Qualifications; and SB 1186 – Disability Access.

Mr. Dunn announced the candidates for State Bar Officers for year 2012- 2013 in alphabetical order for each of the offices:

Treasurer:	Gretchen Nelson and Heather Rosing
Vice President:	Luis Rodriguez
President:	Pat Kelly, Loren Kieve and Wells Lyman

Mr. Streeter called for public comment, inquiring as to whether there were persons in attendance who wished to comment on a particular item on the agenda. No one present asked to comment.

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.

- 54-121 RESOLVED, that upon the recommendation of the Regulation, Admissions and Discipline Oversight Committee, the Board of Trustees hereby approves the proposed revision to rule 31.0 of the Rules of Procedure for Fee Arbitrations and the Enforcement of Awards by the State Bar of California, in the form attached hereto as Attachment A.
- 54-122 RESOLVED, that the upon recommendation of the Regulation, Admissions and Discipline Oversight Committee, the Board of Trustees approves the proposed revision to rule 30.0 of the Model Rules of Procedure for Fee Arbitrations, in the form attached hereto as Attachment A.
- 54-131 RESOLVED, that upon the recommendation of the Member Oversight Committee, the Board hereby approves the fee adjustments for the State Bar member(s) as noted below:
- Ester Adut (#220109) Waive member's 2012 late payment penalty in the amount of \$100.
- Leslie G. Arnold (#183092) Waive member's 2012 late payment penalty in the amount of \$100.
- Robert F. Becker (#93171) Waive 50% of member's 2012 annual fees in the amount of \$200 and member's late payment penalty in the amount of \$100.
- Andrew J. Black (#230531) Waive member's 2012 late payment penalty in the amount of \$100.
- Rita Canales (#181778) Waive 50% of member's 2012 annual fees in the amount of \$200 and member's late payment penalty in the amount of \$100.
- Richard Chira (#63643) Partial waiver of member's outstanding balance in the amount of \$2,405 representing annual fees for 2007 – 2011, contingent upon payment of \$500 and 2012 annual fees.
- Amy Cohen (#220604) Waive \$355 and allow member to transfer to Inactive status and pay the Inactive rate, including the late payment penalty, in the amount of \$145 for 2012.
- Mark Collins (#60849) Waive member's 2012 fees, including the late payment penalty, in the amount of \$500.
- Kathleen McCarthy Crews (#230230) Waive \$285 and allow member to transfer to Inactive status, effective July 1, 2009 and pay the Inactive rate of \$115 for 2012.

Andrew Crotty (#251159) Waive 50% of member's 2012 fees in the amount of \$200 and waive the late payment penalty in the amount of \$100.

Gerald Curry (#76169) Waive member's remaining balance of his 2012 fees in the amount of \$275.

Shannan Dunleavy (#248767) Waive member's remaining balance of her 2012 fees in the amount of \$355.

Vanessa H. Eisemann (#210478) Waive member's remaining balance of her 2012 fees in the amount of \$200.

Abigail Evans (#249629) Waive member's 2012 late payment penalty in the amount of \$100.

Jonathan E. Finegold (#134742) Waive member's 2012 late payment penalty in the amount of \$100.

Patricia Gamza (#160342) Waive member's 2012 late payment penalty in the amount of \$100. Allow member to transfer to Inactive and pay the Inactive rate for 2012 if requested.

Sharen H. Ghatan (#216073) Waive member's 2012 late payment penalty in the amount of \$100.

Marnie Glass (#130514) Waive member's 2012 annual fees in the amount of \$145.

Daniel J. Goodstein (#97579) Waive 50% of member's 2012 annual fees in the amount of \$200.

D. Kaye Hamilton (#52451) Waive member's 2012 annual fees in the amount of \$500, contingent upon member transferring to Inactive status.

Joseph Kostmayer (#151708) Waive 50% of member's 2012 annual fees in the amount of \$200. If member is unable to pay this amount, member may go Inactive and Board waives the 2012 Inactive late payment penalty in the amount of \$30.

Philip S. Kurnit (#52054) Waive member's 2012 late payment penalty in the amount of \$100.

Jeffrey Langan (#186762) Waive 2012 Inactive late payment penalty in the amount of \$30, contingent upon member transferring to Inactive status.

Gerard Martorano (#231628) Allow member to pay the scaled membership rate of \$300 for 2012 and waive the 2012 late payment penalty in the amount of \$100.

Tracy L. Piasecki (#230634) Waive 50% of 2012 annual fees in the amount of \$200 and waive the 2012 late payment penalty in the amount of \$100.

Amanda C. Raffanti (#210079) Waive 2012 late payment penalty in the amount of \$100.

Michelle Samonek (#216001) Waive 2012 late payment penalty in the amount of \$100.

Emily R. Schmidt (#273188) Waive 2012 late payment penalty in the amount of \$100.

Arthur Singer (#181585) Waive 2012 late payment penalty in the amount of \$30.

Ronald Slater (#134264) Waive 50% of 2012 annual fees in the amount of \$200.

John Starbuck (#121085) Waive member's 2012 annual fees in the amount of \$85.

Tiffany Stevens (#225940) Waive member's outstanding balance in the amount of \$2,830.

June Teecher (#22119) Waive member's 2012 annual fees in the amount of \$500.

Victor Tufford (#72976) Waive member's remaining balance on his 2012 annual fees in the amount of \$385.

Laura Walker (#223448) Waive 50% of 2012 annual fees in the amount of \$200 and waive the 2012 late payment penalty in the amount of \$100.

Marjorie Wallace (#073053) Waive member's 2012 late payment penalty in the amount of \$100.

Eugene C. Wheeler (#64720) Waive member's 2012 annual fees in the amount of \$500.

54-132

RESOLVED, pursuant to California Rule of Court 9.31 and the Rules of the State Bar, and upon recommendation of the Member Oversight Committee, that the Board of Trustees hereby authorizes that those members of MCLE Compliance Group 2 who do not bring themselves into compliance with their MCLE requirement by July 2, 2012, shall be enrolled as inactive members of the State Bar of California and placed on "Not Eligible to Practice" status, effective July 3, 2012; and it is,

FURTHER RESOLVED, that the Board of Trustees hereby authorizes staff to remove members from administrative inactive status once the member has provided proof of compliance and paid all noncompliance fees.

54-133

RESOLVED, that upon the recommendation of the Member Oversight Committee, the Board hereby ascertains and determines:

- (a) that each of the persons named in the list this day before the Board of Trustees is a member of The State Bar of California;
- (b) that each such person has failed to fully pay fees, penalties or costs as established pursuant to the provision of sections 6086.10, 6140, 6140.3, 6140.35, 6140.5 (c), 6140.55, 6140.6, 6140.7, 6140.9 and 6141 of the Business and Professions Code;
- (c) that there has been sent to each such person, two months' written notice of his or her delinquency which included notice of section 6143 of the Business and Professions Code;
- (d) that as shown by the records of the State Bar, the address of each such person is as set forth herein;
- (e) and hereby recommends to the Supreme Court of California that each such person be suspended from membership in the State Bar, and from the practice of law in the State of California, effective July 3, 2012, until such time as he or she 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, in the form attached to these minutes, and made a part hereof, and it is



54-133

FURTHER RESOLVED, that for the purpose of withdrawing the foregoing recommendation for suspension in particular cases, the Secretary or his designee is authorized and directed to strike from the foregoing list the name of any member of the State Bar who by proper remittance (e.g., credit card accepted by the State Bar, cash, cashier's check, money order, bank certified check, or wire transfer) 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 he or she is delinquent; and to notify the Clerk of the Supreme Court of California of the fact of such payment and 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, the Secretary or his designee is authorized and directed to change the data as to status or the amounts of delinquency on said list and will forthwith notify the Clerk of the Supreme Court of California accordingly of the consequent modification of the Board of Trustees' recommendation for suspension.

54-141

Financial Statement for the Quarter Ended March 31, 2012

RESOLVED, that upon the recommendation of the Planning, Program Development and Budget Committee, the Board hereby receives the financial statement for the quarter ended March 31, 2012, as certified by the Chief Financial Officer, and on file in the San Francisco office of the State Bar.

Investment Report for the Quarter Ended March 31, 2012

RESOLVED, that upon the recommendation of the Planning, Program Development and Budget Committee, the Board hereby receives the investment report for the quarter ended March 31, 2012, as certified by the Chief Financial Officer, and on file in the San Francisco office of the State Bar.

Client Security Fund Report for the Quarter Ended March 31, 2012

RESOLVED, that upon the recommendation of the Planning, Program Development and Budget Committee, the Board hereby receives the Client Security Fund report for the quarter ended March 31, 2012, as certified by the Chief Financial Officer, and on file in the San Francisco office of the State Bar.

54-142 RESOLVED, that upon the recommendation of the Planning, Program Development and Budget Committee, the Board hereby receives the audited Statement of Expenditures of Mandatory Membership Fees in the form this day before the Board, for the year ended December 31, 2011, and the accompanying Report of the Independent Auditor; and it is

FURTHER RESOLVED, that when the billing of the 2013 membership fees is mailed to members of the State Bar, staff is directed to post the Statement and Report on the State Bar's Web site and to notify members of the posting in the December 2012 issue of the State Bar's e-Journal.

54-143 RESOLVED that authority heretofore granted to persons to sign transfer orders and checks upon the various State Bar accounts and to have access to the State Bar safe deposit box is hereby revoked; and it is

FURTHER RESOLVED that each bank in which the State Bar maintains an account or safe deposit box shall be furnished a copy of this resolution and be notified that the names of the members of the Board, the Executive Director, Deputy Executive Director, Chief Financial Officer, and Finance Managers, who are now so authorized to sign withdrawal orders, transfer orders and checks and authorize transfer of funds from one State Bar account to another State Bar account are as follows:

Jon Streeter	President and Board Member
Joseph Dunn	Executive Director/Secretary
Robert A. Hawley	Deputy Executive Director
Peggy Van Horn	Chief Financial Officer
Christine Wong	Director of Finance/Controller
Ray Farrish	Finance Manager

Signatures required for various transactions are:

For checks drawn on a commercial account:

- (a) Any single check of \$75,000.00 or more requires the manual signatures of any two of the positions listed above.
- (b) Any single check less than \$75,000.00 may be processed through a check signing machine utilizing a signature plate engraved with the name of the Executive Director.

Authority is hereby granted to any two of the above persons to open cash accounts for the State Bar of California at securities brokerage firms and to place orders in such accounts to purchase and sell securities.

Transfer of funds from one State Bar account to another State Bar account, whether requested by telephone, internet, fax, orally or in writing requires the signature of any of the persons listed above.

In addition, for checks drawn on the Los Angeles commercial account:

- (a) Any single check less than \$3,000.00 requires the signature of one of the following:

Steven Mazer	Director of Operations
Gilda Munoz	Director of Human Resources
Vanessa Poe	Operations and Management Deputy Director

- (b) Any single check of \$3,000.00 or over requires the signature of any two of the above listed persons.

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

RESOLVED, that upon the recommendation of the Regulation, Admission and Discipline Oversight Committee, the Board of Trustees hereby adopts the amended resolution to include criminal conviction matters as part of the updated discipline cost formula; and it is

FURTHER RESOLVED, that the updated cost model apply to discipline costs assessed in all matters in which a criminal conviction proceeding is initiated pursuant to Rules 5.340-5.342, Rules of Procedure of the State Bar of California, filed on or after the Board's action this date.

All members listed on the roll call slip voted yes except Dennis Mangers who had left the meeting.

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

RESOLVED, that upon the recommendation of the Planning, Program Development and Budget Committee, the Board of Trustees hereby authorizes an increase in the reimbursement rate to local bar associations for each fee arbitration or fee mediation matter it assigns pursuant to Business and Professions Code 6200 et. seq. from \$36 to \$50 on or after July 1, 2012.

All members listed on the roll call slip voted yes except Dennis Mangers who had left the meeting.

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

RESOLVED, that upon the recommendation of the Audit Committee, the Board hereby adopts the recommended OCTC metrics and narrative proposed by the Task Force on Discipline System Metrics and Monitoring.

All members listed on the roll call slip voted yes except Dennis Mangers who had left the meeting.

The Board went into closed session at 10:45 a.m. and those other persons present left the meeting.

The Board considered the appointments in closed session and the action taken is reported below.

The closed consent appointment agenda was presented to the Board and, no objection being raised thereto, all below consent matters were deemed unanimously adopted.

6011 RESOLVED, that upon the recommendation of the Nominations and Appointments Committee, the Board of Trustees hereby appoints the following fee arbitrators to the State Bar Fee Arbitration Department, each for a term commencing May 14, 2012, and expiring December 31, 2012:

Name	County	Bar Number or Layperson
Berman, Martin	Riverside	33283
Dunsay, Richard	Monterey	36810
Ellis, Fredda	Los Angeles	90518
Kraushaar, Nicholas	Riverside	57525
Parker, David B.	Los Angeles	72193
Ryder, Richard James	Riverside	74986
Smith, Ronald S.	Los Angeles	48701
Nemlaha, Beatrice	Riverside	89958
Adams, John Quincey	Los Angeles	60391

6012 RESOLVED, that upon the recommendation of the Nominations and Appointments Committee, the Board hereby appoints Wayne A. Silver, Sunnyvale, member, Bankruptcy Law Advisory Commission, effective immediately, replacing Frederick E. Clement, Redding, resigned, for the remaining portion of Mr. Clement's term expiring October 13, 2013, or until further order of the Board, whichever occurs earlier.

6013 RESOLVED, that upon the recommendation of the Nominations and Appointments Committee, the Board hereby appoints or reappoints, as the case may be, officers and members of the Section Executive Committees as set forth on the forms attached to the minutes and made a part hereof; effective at the close of the 2012 State Bar Annual Meeting (October 14, 2012), or as indicated; each officer and member to serve a term expiring as indicated; or until further order of the Board, whichever occurs earlier.

6014 RESOLVED, that upon the recommendation of the Nominations and Appointments Committee, the Board hereby appoints appoint Justice Richard M. Sims III (Ret.), Sacramento, Thomas N. Andrews, Redding, Timothy Brisson, Auburn, and Laurie Eavenson, Auburn, as members of the Board of the Directors of Legal Services of Northern California; each for a three-year term, commencing April 30, 2012, and expiring April 30, 2015, or until further order of the Board, whichever occurs earlier.

6021 Upon motion made, seconded and unanimously adopted, it was

6021 RESOLVED, that upon the recommendation of the Nominations and Appointments Committee, the Board hereby appoints or reappoints, as the case may be, officers and members of the standing and special committees as set forth on the forms attached to the minutes and made a part hereof; effective at the close of the 2012 State Bar Annual Meeting (October 14, 2012), or as indicated; each officer and member to serve a term expiring as indicated; or until further order of the Board, whichever occurs earlier.

All members listed on the roll call slip voted yes, except Samson Elsbernd who recused himself from the matter.

The Board resumed open session at 10:55 a.m. and the meeting was adjourned.

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, the State Bar's San Francisco offices, 180 Howard Street, San Francisco, California, 94105, on Friday, July 20, 2012 at a time to be determined.