

AGENDA ITEM

JULY 10 - Board of Trustees – May 12-13, 2016 Open Minutes

THE STATE BAR OF CALIFORNIA

OPEN MINUTES

BOARD OF TRUSTEES MEETING

SAN FRANCISCO, CALIFORNIA

May 12-13, 2016

The Board of Trustees of The State Bar of California convened in open session at 9:19 am at the State Bar of California, 180 Howard Street, Board Room, 4th Floor, San Francisco, California, Friday, May 13, 2016, David Pasternak presiding.

The following members of the Board of Trustees were present: Janet Brewer, Michael Colantuono, Glenda Corcoran, Terrance Flanigan, James Fox, Renée LaBran, Jason Lee, Dennis Mangers, Joanna Mendoza, Danette Meyers, Gwen Moore, Stacie Spector, Brandon Stallings and Todd Stevens.

The following members of the Board of Trustees were absent: Miriam Krinsky, Hernán Vera and Terry Wiley.

The following members of staff were present: Teri Greenman, Vanessa Holton, Gayle Murphy, Elizabeth Parker, Jennifer Wada and Leah Wilson.

Also present: Justice Lee Edmon, Chair, Commission for the Revision of the Rules of Professional Conduct, Raquel Hines, Vice President, General Unit (San Francisco), Chris McConkey, CYLA Board Member, Mark Ressa, Immediate Past Co-Chair of the Council of State Bar Sections, Mark Tuft, Commission for the Revision of the Rules of Professional Conduct, Theresa Witherspoon, Staff Attorney, SEIU Local 1000 and Lawrence Yee, Deputy General Counsel.

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

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

All members listed on the slip voted yes.

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

The following summarizes public comment and staff/Board of Trustees discussion on agenda item number 704 - SB 387 Report: Workforce, Classification and Compensation, and Spending Plan.

SEIU local 1000 San Francisco General Unit Vice President, Raquel Hines, Vice President, and SEIU Staff Attorney, Theresa Witherspoon addressed the Board.

Ms. Hines expressed her appreciation for the prior opportunities to discuss the Workforce Planning and Classification and Compensation reports. She stated that the reports may affect union employees who perform good work for the State Bar and who are concerned about their job status. She concluded by saying that the union hoped to work with management on productive results.

Ms. Witherspoon emphasized that recommendations for lower salaries would affect low ranked staff and that changes resulting from the Workforce Planning and Classification and Compensation reports would need to be negotiated.

Ms. Parker said staff would review the recommendations and report back to the Board of Trustees with a task list for assignment to board committees.

Ms. Wilson noted that the implementation deadline for the recommendations is December 31, 2016.

Mr. Pasternak stated that he would meet with Trustees Krinsky and Fox and Ms. Parker and Ms. Wilson to discuss how to handle the recommendations. It was his thought that many of the recommendations would be vetted through the Regulation and Discipline Committee to the Board of Trustees. Trustees also suggested that the recommendations should be divided amongst the Regulation and Discipline, Planning and Budget, and Audit Committees with each committee having its individual scope of work.

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 11, 2016 in Los Angeles, California are approved as written; and it is

FURTHER RESOLVED, that the minutes of the special meeting held on Tuesday, April 26, 2016, in Sacramento, California are approved as written.

All members listed on the slip voted yes.

30 Mr. Pasternak announced that there would be a special meeting for the 2016-2017 election of officers immediately preceding the July 22, 2016 Board of Trustees meeting in Los Angeles. He advised that he would work with Ms. Parker on the election format which would likely include candidate opening/closing statements and a Q&A with the board.

Mr. Pasternak recounted recent outreach activities including attendance at the Korean American Bar Association installation dinner where Chief Trial Counsel Jayne Kim was the keynote speaker with Ms. Parker provided the introduction. President Pasternak noted that Ms. Kim gave a wonderful speech.

Ms. Parker announced that Ms. Kim has declined a consulting role with the State Bar. She thanked and acknowledged Ms. Kim for all of her hard work and dedication.

Mr. Pasternak expressed his gratitude to the new leadership team of Ms. Parker, Ms. Wilson and Ms. Holton. He noted that despite their short tenure, they had brought an incredible array of positive changes to the State Bar:

- The State Bar is in full compliance with the Bagley-Keene open meeting rules and the California Public Records Act;
- All 2016 statutory reports have been filed on time; and
- In contrast to the State Bar's prior practice of sending matters to outside counsel, the Office of General Counsel is now providing high-quality, in-house legal advice.

Mr. Pasternak introduced Chris McConkey, CYLA board member.

Mr. McConkey advised that CYLA had continued to actively encourage pro bono legal service and was working hard to reduce the justice gap in California.

He advised that CYLA has just completed a four and half month process of vetting nominees for their Jack Berman award, which annually recognizes a young lawyer with a distinguished record of public service. CYLA reached out to ninety-two legal services non-profits and small, medium and large law firms. Eleven individuals were nominated representing 6000 hours of public service. He advised that the final nomination would go to the Board of Trustees at its July meeting.

Mr. McConkey noted that as part of CYLA's commitment to providing education and training resources to young lawyers, the Annual Practical Skills Symposium was scheduled for July 11, 2016 in San Francisco and July 14, 2016 in Los Angeles.

Mr. Pasternak introduced Mark Ressa, Immediate Past Co-Chair of the Council of State Bar Sections.

Mr. Ressa noted the mutually beneficial relationship of the Sections and the State Bar. He explained that the Sections give lawyers an identity with the State Bar, provide low cost legal education, which helps to increase public protection, and increase access to justice through public outreach and education.

He stated that the Sections had been discussing de-unification and were in the process of voting on this issue. Six of the Sections had voted so far. The nine remaining Sections and CYLA would cast their votes by June 17, 2016. A follow-up letter would be sent to the Board of Trustees detailing the Sections' official vote on de-unification.

He also noted that the Sections are in compliance with Bagley-Keene and do not plan on requesting any modifications.

Mr. Ressa thanked the Board of Trustees liaisons and encouraged their continued support.

Mr. Pasternak asked whether the Sections would be willing to increase their participation in public protection activities such as mentoring, legal services outreach, and pro bono services. Mr. Pasternak opined that this would be a good way to align the work of the Sections with the Bar's regulatory scope.

Mr. Pasternak introduced Ms. Wada, the State Bar's legislative advocate, who presented bills of interest to the State Bar:

AB 2878 – State Bar's Fee Bill. The fee bill made it out of the Assembly Judiciary Committee and was currently on the Assembly Floor. She noted that it should be out of the Assembly by the end of May and would go to the Senate in June.

Ms. Wada anticipated that the Legislature would want to amend the bill after review of the four statutory reports presented to the Board of Trustees on May 13, 2016 (Workforce Planning, Classification and Compensation Study, Backlog Development and the Spending Plan), Bagley-Keene and California Public Records Act (CPRA) cleanup, and the State Bar governance matters. An oversight hearing to look more closely at governance issues could be scheduled in August.

SB 1257 (Block) – This bill would require fifty hours of Mandatory Pro Bono with self-certification and mandate that the State Bar randomly audit the self-certification. The bill also has a "limited means" provision. Ms. Wada said that discussions were ongoing.

SB 1281 (Block) – This bill would additionally require a law school that is not accredited by the American Bar Association (ABA) to publicly disclose on its Internet Web site, specified information, including tuition costs, class sizes, number of faculty, bar passage data, and employment outcomes for graduates. At the Trustees July 2016 meeting, the Committee of Bar Examiners will recommend a support position on this bill.

Ms. Wada stated that she would be meeting with the SEIU Executive Director to discuss the State Bar Classification and Compensation Study.

30-1

Mr. Pasternak presented a special resolution, on the occasion of his retirement, to Lawrence C. Yee, Deputy General Counsel, Office of General Counsel.

Upon motion made, seconded and unanimously adopted:

WHEREAS, The members of the Board of Trustees of the State Bar of California express our sincerest gratitude to Lawrence C. Yee for his decades of dedication and invaluable service to the State Bar; and

WHEREAS, Lawrence C. Yee has dutifully counseled the State Bar through the past 30 years, having worked as an assistant general counsel, senior assistant general counsel, chief assistant general counsel, deputy general counsel and acting general counsel, having exceptionally represented the State Bar in federal and state court; and

WHEREAS, Lawrence C. Yee has contributed significantly to numerous State Bar committees, commissions and task forces as related to the areas of unlicensed practice of law and immigration, among others, and as a policymaker, has shepherd the State Bar through the intricacies of legislation; and

WHEREAS, Lawrence C. Yee has stood as the linchpin of the Office of General Counsel, having received numerous accolades for his exceptional quality of legal representation, advice, and analysis of unique and complex issues; and

WHEREAS, The members of the State Bar Board of Trustees wish to make a permanent expression of their appreciation for Lawrence C. Yee's outstanding and invaluable efforts and tireless work ethic; and now, therefore, be it

RESOLVED, That the State Bar Board of Trustees expresses its deepest appreciation to Lawrence C. Yee for his unparalleled work to improve attorney regulation and the legal profession.

All members listed on the slip voted yes.

42-1 Ms. Parker announced the candidates for the 2016-2017 Elections: President, Vice President and Treasurer of the State Bar:

President: Michael Colantuono, James Fox

Vice President: Danette Meyers

Treasurer: Jason Lee, Todd Stevens

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.

50-1 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 Executive Director, Chief Operating Officer, Director of Finance, Director of General Services and Director of Human Resources, who are now so authorized to approve investment transactions, 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:

Elizabeth Parker	Executive Director
Leah Wilson	Chief Operating Officer
Christine Wong	Director of Finance
Steven Mazer	Director of General Services
Gilda Muñoz	Director of Human Resources

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.

54-131 RESOLVED, that the Board of Trustees receive and accept the 2015 Annual Report of the California Board of Legal Specialization.

54-132 RESOLVED, that the Board of Trustees 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 membership fees, penalties or costs on or before June 30, 2016, and hereby ascertains and determines:

- (a) that the Secretary or his designee has performed the ministerial function of determining that each person who is to be recommended to the Supreme Court of California for suspension for nonpayment of dues is a member of The State Bar of California;
- (b) that the Secretary or his designee has determined that each such person has failed to fully pay fees, penalties and/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) that the Secretary or his designee has sent to each such person, at his or her address of record with the State Bar of California, two months' written notice of his or her 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 be suspended from membership in the State Bar, and from the practice of law in the State of California, effective July 1, 2016, 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; and it is

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 notify the Clerk of the Supreme Court of California of 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 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 of any member and to notify the Clerk of the Supreme Court of California accordingly of the consequent modification of the Board of Trustees' recommendation for suspension.

54-133

RESOLVED, pursuant to California Rule of Court 9.31 and the Rules of the State Bar, that the Board 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 June 30, 2016, be enrolled as inactive members of the State Bar of California and placed on "Not Eligible to Practice" status, effective July 1, 2016; and it is

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

54-141 RESOLVED, that the Board of Trustees approve the fee adjustments for the State Bar members as presented this day before the Board, and on file in the San Francisco office of the State Bar.

54-142 54-142 Financial Statement for the Quarter Ended March 31, 2016

RESOLVED, that upon the recommendation of the Planning and Budget Committee, the Board hereby receives the financial statement in the form this day before the Board, for the quarter ended March 31, 2016, as certified by the Chief Operating Officer, and on file in the San Francisco office of the State Bar.

54-142 Investment Report for the Quarter Ended March 31, 2016

RESOLVED, that upon the recommendation of the Planning and Budget Committee, the Board hereby receives the investment report in the form this day before the Board, for the quarter ended March 31, 2016, as certified by the Chief Operating Officer, and on file in the San Francisco office of the State Bar.

54-142 Client Security Fund Report for the Quarter Ended March 31, 2016

RESOLVED, that upon the recommendation of the Planning and Budget Committee, the Board hereby receives the Client Security Fund report in the form this day before the Board, for the quarter ended March 31, 2016, as certified by the Chief Operating Officer, and on file in the San Francisco office of the State Bar.

54-181 RESOLVED, that the Board of Trustees hereby ratifies the January 16, 2015 action of the Board Audit Committee and hereby amends the Audit Committee's charter to expressly provide that the oversight functions of the Audit Committee include specifically the quarterly review of summary reports of the travel and business expense of the Senior Executives and the Board Members.

54-182 WHEREAS, on April 19, 2016, the Board Audit Committee, which is authorized to review the draft financial statements and direct staff to submit them to the Legislature and Supreme Court on behalf of the Board of Trustees, adopted a resolution to receive and order filed the Audited Financial Statements for Years Ended December 31, 2015 and 2014; and it is hereby

RESOLVED, that the Board of Trustees hereby affirms the action taken by the Board Audit Committee on behalf of the Board.

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

RESOLVED, that the Board of Trustees approve changes to Section 1 of the Board Book, Tabs 1.1, 1.2 and 1.3; Section 2, Tabs 2.1, 2.2, 2.3, 2.4, 2.5, 2.6; Section 3, Tabs 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7; Section 4, Tabs 4.1, 4.2, 4.3, 4.4, 4.5 as presented to the board this day; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff, in finalizing the contents of Section 1, 2, 3 and 4 to make necessary corrections, conforming changes, and other non-substantive amendments to the content approved to the extent that it effectuates the intent of the policy statements, subject to the review and approval of the Office of General Counsel.

All members present and recorded on the roll-call slip voted yes.

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

RESOLVED, following notice and publication for comment, and having received no comments, and upon recommendation of the Regulation and Discipline Committee, the Board of Trustees adopts the proposed amendment to rule 2603 of the Rules of Procedure of the State Bar of California, Title III, Division II, Chapter 6, as set forth in attachments B and C, effective immediately.

All members present and recorded on the roll-call slip voted yes.

122 *ITEM WAS WITHDRAWN.*

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

RESOLVED, that the Board of Trustees approves the amendments to a new Rule 4.11 of the Admissions Rules, attached hereto, effective immediately.

All members present and recorded on the roll-call slip voted yes.

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

RESOLVED, that the Board of Trustees approve the assessment of the standard MCLE noncompliance fee of \$75 to those members selected for MCLE Audit whose audit submission is filed after the initial audit deadline; and it is

FURTHER RESOLVED, that the Board of Trustees approve and set an additional MCLE Audit Deficiency Fee of \$200 to be applied to those members selected for MCLE Audit whose audit submission is deficient by any number of hours.

All members present and recorded on the roll-call slip voted yes.

143 There was no action on this item.

701 *ITEM WAS WITHDRAWN.*

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

RESOLVED, that the Board of Trustees hereby affirm the updated set of goals and objectives for the final year of its current 2012-2017 Five-Year Plan established at its January 31, - February 2, 2016 Planning meeting and attached as Attachment 1.

All members present and recorded on the roll-call slip voted yes with the exception of Joanna Mendoza who voted no.

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

RESOLVED, that the Board of Trustees authorize the release of proposed amended Rules 5-110 and 5-220 of the Rules of Professional Conduct, attached hereto as Attachment A, for public comment for a period of 45 days; and it is

FURTHER RESOLVED, that this authorization for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposal.

All members present and recorded on the roll-call slip voted yes except for Terry Flanigan and Gwen Moore who were absent for the vote.

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

RESOLVED, that the Board of Trustees receives the following reports:

- National Center for State Courts (NCSC): State Bar of California Workforce Planning Report to the Office of the Executive Director (May 10, 2016)
- CPS HR Consulting: Classification Study, State Bar of California Phase I Report (May 10, 2016)
- State Bar Backlog: A Report on the Development of an Appropriate Backlog Goal and an Assessment of the Staffing Needed to Achieve it (May 11, 2016)
- State Bar of California Spending Plan Submitted Pursuant to Business and Professions Code Section 6140.16 (May 13, 2016)

and it is;

FURTHER RESOLVED, that the Board of Trustees directs staff to make any non-substantive changes necessary to finalize the reports for submission to the Legislature by May 15, 2016.

All members present and recorded on the roll-call slip voted yes.

705 *ITEM WAS WITHDRAWN.*

706 *ITEM WAS WITHDRAWN.*

707 There was no action on this item.

The Board went into closed session at 1:25 pm and reconvened in open session at 2:35 pm. The Board went back into closed session at 3:17 pm to consider the appointments and the action taken is reported below.

6000 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.

6011 RESOLVED, that the Board of Trustees approve the appointment of Esteban Rodriguez and Tony LoPresti, to the California Rural Legal Assistance Board of Directors for a three-term commencing on May 16, 2016 and expiring April 30, 2018, or until further order of the Board, whichever occurs earlier.

6012 RESOLVED, that the Board of Trustees approve the appointment of Blaine Evanson Los Angeles, to the Legal Aid Society of Orange County Board of Directors for a three-term term commencing on May 16, 2016 and expiring April 30, 2019 or until further order of the Board, whichever occurs earlier.

6013 RESOLVED, that upon the recommendation of the Nominations and Appointments Committee the Board of Trustees hereby appoint or reappoint, as the case may be, officers and members of the Standing, Special and Section Executive Committees as set forth on the forms attached to the minutes and made a part hereof; effective at the close of the 2016 State Bar Annual Meeting (October 2, 2016), or as indicated; each officer and member to serve a term expiring as indicated; or until further order of the Board, whichever occurs earlier.

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

RESOLVED, that the Nominations and Appointments Committee recommends that the Board appoint or reappoint, as the case may be, the following, State Bar delegates, American Bar Association (ABA) House of Delegates, contingent upon appointees being of good standing with the ABA; each term is for two years and is effective upon the conclusion of the 2016 ABA Annual Meeting (August 9, 2016) and expires at the conclusion of the 2018 ABA Annual Meeting (August 7, 2018), or until further order of the Board, whichever occurs earlier: Anthony Barash, Alyssa Ehrlich, Sandra McCandless, Maureen Onyeagbako, Roger Royse, Mark Schickman, an John Uilkema; and it is

FURTHER RESOLVED, that that that the board committee recommends that the Board appoint the following alternates to the State Bar's delegation to the ABA House of Delegates, contingent upon the alternates being of good standing with the ABA; each alternate term is for one-year and is effective upon conclusion of the 2016 ABA Annual Meeting (August 9, 2016) and expires at the conclusion of the 2018 ABA Annual Meeting (August 7, 2018), or until further order of the Board, whichever occurs earlier: Ernestine Forrest and Jerry S. Miller.

All members present and recorded on the roll-call slip voted yes.

6022 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Nominations and Appointments Committee recommends that the Board appoints Audra Ibarra, Palo Alto, State Bar member, Judicial Council, for a three-year term commencing September 15, 2016, and expiring September 14, 2019, or until further order of the Board, whichever occurs earlier.

All members present and recorded on the roll-call slip voted yes.

6023 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the State Bar Board of Trustees approve appointment or reappointment, as the case may be, of the officers and members of the Committee on Mandatory Fee Arbitration as set forth below; effective at the close of the 2016 State Bar Annual Meeting (October 2, 2016), or as indicated; each officer and member to serve a term expiring as indicated; or until further order of the Board, whichever occurs earlier.

REAPPOINT CHAIR	Migliaccio, Nicola
REAPPOINT 1 ST VICE	Walsh, Lorraine
REAPPOINT 2 ND VICE	Schreiber, Mark P.
APPOINT NEW MEMBERS	Hess, Lee A. Duesdieker, George Maloney, Patrick M. Sharron, McLawyer

All members present and recorded on the roll-call slip voted yes.

The Board adjourned its meeting at 3:27 pm and went into Executive Closed Session.

The Board may meet again at the call of the President at any time prior to the next regularly scheduled meeting of the Board, or, if no such meeting be called, at the State Bar, 845 S. Figueroa Street, Board Room, 2nd Floor, Los Angeles, CA 90017, on Friday, July 22, 2016, at a time to be determined.