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Article 1
FINANCIAL AND OTHER CONFLICTS, EFFECT

The rules regarding financial and personal conflicts for members of the Board of Trustees, and the effect and applicability of such rules, are governed by the Conflict of Interest Code for the Board of Trustees of the State Bar of California as adopted by the Supreme Court of California pursuant to Government Code §§ 82011(e) and 87303, the Political Reform Act of 1974 (Government Code §§ 81000 et seq.), and Business and Professions Code Article 2.5, sections 6035, 6036, 6037 and 6038.

ARTICLE 2 CONFLICTS OF INTEREST

Section 1 Article 2.5: Conflicts of Interest

§6035. Definitions

Unless the contrary is stated or clearly appears from the context, the definitions set forth in Chapter 2 (commencing with section 82000) of Title 9 of the Government Code shall govern the interpretation of this article. (Added by Stats. 1978, ch. 752, effective September 14, 1978.)

§6036. Disqualification of Member for Financial or Personal Conflict; Exceptions; Disclosure

- (a) Any member of the board of trustees must disqualify himself or herself from making, participating in the making of, or attempting to influence any decisions of the board or a committee of the board in which he or she has a financial interest, as that term is defined in Section 87103 of the Government Code, that it is reasonably foreseeable may be affected materially by the decision.
- (b) Any member of the board of trustees must likewise disqualify himself or herself when there exists a personal nonfinancial interest which will prevent the member from applying disinterested skill and undivided loyalty to the State Bar in making or participating in the making of decisions.
- (c) Notwithstanding subdivisions (a) and (b), no member shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the action or decision to be made. The fact that a member's vote is needed to break a tie does not make his or her participation legally required for the purposes of this section.
- (d) A member required to disqualify himself or herself because of a conflict of interest shall (1) immediately disclose the interest, (2) withdraw from any participation in the matter, (3) refrain from attempting to influence another member, and (4) refrain from voting. It is sufficient for the purpose of this section that the member indicate only that he or she has a disqualifying financial or personal interest.
- (e) For purposes of this article and unless otherwise specified, "member" means any appointed or elected member of the board of trustees. (Added by Stats. 1978, ch. 752, effective September 14, 1978; Stats. 2005, ch. 341 (A.B. 1529), §1, effective September 22, 2005; Stats. 2011, Ch. 417, § 30 effective January 1, 2012).

§6037. Violations by Members; Validity of Action or Decision of Board; Termination of Member; Misdemeanor; Civil and Criminal Penalties

No action or decision of the board or committee of the board shall be invalid because of the participation therein by a member or members in violation of section 6036. However, any member who intentionally violates the provisions of subdivision (a) of section 6036 is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding five days, or by a fine not exceeding one thousand dollars (\$1,000), or by both, and, if the member is an attorney member of the board, a certified copy of the record of conviction shall be transmitted to the Supreme Court for disposition as provided in sections 6101 and 6102. Upon entry of final judgment of conviction, the member's term of office on the board of trustees, and duties and authority incidental thereto, shall automatically terminate. Any member who intentionally violates the provisions of subdivision (b) of section 6036 shall be liable for a civil penalty not to exceed five hundred dollars (\$500) for each violation, which shall be assessed and recovered in a civil action in a court of competent jurisdiction brought in the name of the state only by a district attorney of a county in which the member resides or maintains offices and the penalty collected shall be paid to the treasurer of that county. (Added by Stats. 1978, ch. 752, effective September 14, 1978. Amended by Stats. 1981, ch. 714; Stats. 1983, ch. 1092; Stats. 2011, Ch. 417, § 31 effective January 1, 2012.)

§6038. Governmental Decisions of Specified State Agencies; Applicability of Conflict of Interest Provisions to Members Thereof

Attorney members of the Judicial Council, members of the Commission on Judicial Performance who are not judges, and employees designated in the Conflict of Interest Code of the State Bar of California are subject to provisions of this article with respect to making, participating in the making, or attempting to influence, governmental decisions of their respective state agencies other than decisions of a judicial or quasi-judicial nature. (Added by Stats. 1984, ch. 727, effective July 1, 1985.)

Article 3

DEFINITIONS

Section 1 Statutory Definitions

In substance the provisions of section 6036(a), (c) and (d) of the Business and Professions Code pertaining to financial interests are similar to the provisions of Government Code sections 87100, 87101 and 87103. Title 2, Division 6, Chapter 7, section 18700 et seq., of the California Code of Regulations (CCR) contains definitions of and controlling standards for interpreting the key language in the Government Code sections. These definitions and standards are useful in interpreting the key language in section 6036(a), (c) and (d) of the Business and Professions Code.

Article 4
CONFLICT OF INTEREST CODE FOR THE BOARD OF TRUSTEES OF THE STATE
BAR OF CALIFORNIA

Section 1 *Definitions*

The definitions set forth in Government Code section 82000 et seq. are incorporated by reference in this code.

(Source: Board of Governors' Resolution April 1986, adopted by the Supreme Court, effective June 30, 1986.)

Section 2 *Enumeration of Positions Subject to This Code*

All members of the Board of Trustees are subject to this code.

(Source: Board of Governors' Resolution April 1986, adopted by the Supreme Court, effective June 30, 1986; Bus. and Prof. Code § 6010, amended January 1, 2012.)

Section 3 *Reportable Financial Interests*

A member shall disclose an investment, interest in real property, and income as required by Government Code sections 87206 and 87207 if during a reporting period the Board of Trustees has made a decision that materially affects the investment, interest in real property, or income. Disclosures required by this code are in addition to disclosures required by Business and Professions Code section 6036.

(Source: Board of Governors' Resolution April 1986, adopted by the Supreme Court, effective June 30, 1986; Bus. and Prof. Code § 6010, amended January 1, 2012.)

Section 4 *Disclosure Statements: Contents, Time for Filing, and Reporting Periods*

Disclosures shall be made on forms prescribed by the Fair Political Practices Commission. Contents, time for filing, and reporting periods shall be as follows:

- (a) Initial Statements: Each member who is incumbent on the date this code first becomes effective shall, within thirty (30) days after that date, file a statement identifying the member.
- (b) Assuming Office Statements: Each person who becomes a member of the board after this code becomes effective shall, within thirty (30) days after taking the oath of office, file a statement identifying the member.
- (c) Annual Statements: Each member shall by March 1 file an annual statement disclosing information required by section 3 of this code. The period covered by the annual statement shall be the prior calendar year or that portion of the prior calendar year during which the person making the disclosure was a member of the Board of Trustees.
- (d) Leaving Office Statements: After leaving office, each former board member shall, within thirty (30) days after the date of leaving office, file a

statement disclosing information required by section 3 of this code for the period beginning the day after the closing date of the last statement filed and the date of leaving office.

(Source: Board of Governors' Resolution April 1986, adopted by the Supreme Court, effective June 30, 1986; Bus. and Prof. Code § 6010, amended January 1, 2012.)

Section 5 Place of Filing Statements

Disclosure statements shall be filed with the Secretary of the State Bar. The secretary shall make and retain a copy of each statement and forward the originals to the Clerk of the Supreme Court within five days after the filing deadline or within five days after receipt in the case of statements filed late.

(Source: Board of Governors' Resolution April 1986, adopted by the Supreme Court, effective June 30, 1986.)

Section 6 Assistance to Members

As provided by Government Code section 83114, members may request advice and assistance from the Fair Political Practices Commission with respect to their duties under this code.

(Source: Board of Governors' Resolution April 1986, adopted by the Supreme Court, effective June 30, 1986.)

Section 7 Privileged Information Withheld From a Statement of Economic Interests

If a member of the Judicial Council, Commission on Judicial Performance, or the Board of Trustees of the State Bar of California believes that disclosure under Government Code section 87207(b)(2) of the name of a person who paid fees or made payments to a business entity would violate a legally recognized privilege under California law, the member may assert the privilege as follows:

- (a) The member shall not report in the disclosure statement the information asserted to be privileged.
- (b) The member shall file with the disclosure statement a separate statement under penalty of perjury that (a) advises the filing officer that a reportable source of income has not been reported, (b) asserts the applicable privilege, (c) states the legal basis for the assertion, and (d) states as specifically as possible without defeating the privilege facts that demonstrate why the privilege is applicable.
- (c) The Supreme Court shall designate one or more persons who are not members of the court to act as the code-reviewing body solely to determine if the privilege is applicable. The designated code-reviewing body may request additional information from the member and consider additional evidence in camera. If the designated code-reviewing body determines that disclosure is required, the member shall disclose the

unreported information within fifteen (15) days after the Clerk of the Supreme Court mails notice of the determination.

(Source: The Supreme Court as code-reviewing body under Government Code section 82011(e) adopted the above procedure effective June 30, 1986; Bus. and Prof. Code § 6010, amended January 1, 2012.)

TAB 3.2

CLAIMS AGAINST THE STATE BAR

Section 1 Claims Against the State Bar

Section 1 *Claims Against the State Bar*

- (a) For the purpose of facilitating the timely handling and disposition of claims against the State Bar of California submitted pursuant to the California Tort Claims Act (Government Code, §§ 900 et seq.) that the board delegates authority to review and deny claims against the State Bar that are clearly without legal merit to a claims officer appointed by the executive director. The claims officer will promptly report all claims rejected to the board. Claims involving issues of significant political or operational importance to the State Bar must be submitted to the Board for disposition. The board also authorizes the executive director or his or her designee, in consultation with general counsel, to:
 - (1) Give written notice of insufficiency of a claim pursuant to Government Code § 910.8; or
 - (2) Return a claim as untimely filed.
- (b) General Counsel may authorize settlement of claims or cases that do not implicate a material policy issue up to and including the amount of \$25,000. General Counsel shall keep the Chair of the Board Executive Committee or the committee designated by the Board to review legal matters, informed on a regular basis of settlement activity. At each regularly scheduled meeting of the Board Executive Committee or the committee designated by the Board to review legal matters, in confidential reports, General Counsel shall inform the Board Executive Committee or the committee designated by the Board to review legal matters, of any settlements reached within this authority level and the reason(s) therefore.
- (c) The Board Executive Committee or the committee designated by the Board to review legal matters may authorize settlement of claims or cases that do not implicate a material policy issue from the amount of \$25,001 to and including \$50,000. In confidential quarterly reports, the Chair of the Board Executive Committee or the committee designated by the Board to review legal matters, shall inform the Board of Trustees of the settlements reached within this authority level and the reason(s) therefore.
- (d) The Board of Trustees may authorize settlement in amounts exceeding \$50,000 or in any matter which implicates a material policy issue for the Bar, upon recommendation of the Board Executive Committee or the committee designated by the Board to review legal matters.
- (e) For purposes of this policy, a “material policy issue” is one with important political or operational consequences in the future for the Bar.

(Source: Board of Governors' Resolution, November 1978, October 1979, December 1995, November 2010.)

TAB 3.3

***COLLECTION POLICY FOR
COURT-ORDERED DISCIPLINE COSTS
AND
CSF OBLIGATIONS***

*COLLECTION POLICY FOR
COURT-ORDERED DISCIPLINE COSTS
AND
CSF OBLIGATIONS*

(a) Purpose

This is an internal policy intended to provide a standard to State Bar staff in the collection from disciplined lawyers of court ordered discipline costs and restitution to the Client Security Fund. Nothing in this policy may be construed as relieving a disciplined lawyer from those obligations or extending the time to make payments as part of the membership fees or as a condition of reinstatement or the return to the active practice of law except as may be ordered by the Supreme Court or State Bar Court.

(b) Definitions

- (1) “Discipline costs” are the amounts that a member must pay to the State Bar under Business and Professions Code section 6086.10.
- (2) “CSF restitution” refers to amounts that a member must pay to the State Bar under Business and Professions Code section 6140.5, subdivision (d).
- (3) “Debtor” means
 - (A) a member who has been disbarred or who resigned with disciplinary charges pending and owes court ordered discipline costs or CSF restitution;
 - (B) a member publicly reprimanded or suspended who is delinquent in paying court ordered discipline costs or CSF restitution that has been added to his or her membership fee billing or in making payment under a court approved payment agreement.
- (4) “Debt” refers to discipline costs, CSF restitution, or both owed by a debtor.
- (5) “Collection agency” means a vendor providing collection services under a participating agreement with the State Bar under the Statewide Master Vendor Agreements for Collection Services as part of the Enhanced Collections program of the Judicial Council of California, Administrative Office of the Courts.

(c) No Action (“Hold”) Status

The State Bar may designate a matter as on “hold” status and take no further action against a debtor to enforce a debt under any one of the following reasons:

- (1) The debtor is making timely payments and is not in default under a payment plan approved by the State Bar Court or Supreme Court
- (2) The debtor discharged the obligation in bankruptcy between May 10, 2001 and January 1, 2004, in reliance on *In Re Taggart*, 249 F.3d 987 (9th Cir. 2000)
- (3) The debtor is deceased and the estate has no assets
- (4) The expense to enforce the debt is likely to exceed the amount expected to be collected; or,
- (5) Other good cause as determined by the General Counsel.

(d) Debt Collections

- (1) Debts not designated as on “hold” will be referred for collection by one or more collection agencies.
- (2) The State Bar may accept installment payments by a debtor to the collection agency after notice to the debtor that
 - (A) installment payments to the collection agency do not constitute an extension of time (i) to pay delinquent discipline costs or CSF restitution as part of the membership fees before a suspension for nonpayment or (ii) for payment as a condition of reinstatement or the return to the active practice of law;
 - (B) installment payments to the collection agency do not constitute (i) relief from the court order imposing discipline costs or CSF restitution or (ii) the compromise of any judgment; and
 - (C) an extension of time or relief under Business and Professions Code sections 6086.10 and 6140.7 may be granted only by motion filed in the State Bar Court.

(e) Uncollectible Debts

- (1) When a debt account has been returned uncollected by a collection agency, the State Bar should assure that an applicable judgment under Business and Professions Code section 6086.10 or 6140.5 has been entered and recorded for debts less than 10 years old and \$500 or more. The State Bar may then designate the debt as “uncollectible” and take no further action to enforce the debt except for the renewal of any judgment

and the payment as a condition of any reinstatement or return to membership.

- (2) A debt may be removed from “uncollectible” status and referred back to a collection agency if a debtor or assets has been located or if there is other reason to believe that there has been a change in the economic condition of the debtor.

(Source: Board of Governors' Resolution, July 2007, November 2010.)

TAB 3.4

AMICUS CURIAE PARTICIPATION

Article 1 STATE BAR

- Section 1 Application of Amicus Curiae Policy*
- Section 2 Authorization*
- Section 3 Appropriate Cases*
- Section 4 Application Procedures*
- Section 5 Appearance and Approval by Office of General Counsel*

Article 2 STATE BAR SECTIONS

- Section 1 Amicus Curiae Participation by Sections*
- Section 2 Avoiding Inconsistent Positions; Request by Executive Committees; Conflict of Interest*
- Section 3 Disclaimer*
- Section 4 Side Letter for Sections Amicus Participation*

Article 1 STATE BAR

Section 1 Application of Amicus Curiae Policy

This chapter applies to all requests for State Bar participation in litigation as an amicus curiae, except the requests by general counsel to support State Bar positions in pending or prospective litigation or to protect activities or proceedings conducted by the State Bar or requests made directly by a court for participation by the State Bar. A request for State Bar participation in litigation as an amicus curiae includes any request which would require that the State Bar file or submit any pleading, in letter or other form, with a court in a pending matter, whether in support of a party or otherwise, and whether on the merits, jurisdiction or otherwise.

(Source: Board of Governors' Resolution, May 1981, December 1997.)

Section 2 Authorization

State Bar participation in litigation as an amicus curiae is subject to authorization by the Board of Trustees following an affirmative recommendation by the appropriate board committee.

(Source: Board of Governors' Resolution, May 1981.)

Section 3 Appropriate Cases

The State Bar is a judicial branch agency and should not ordinarily take a partisan position in another's lawsuit. State Bar amicus curiae participation is thus extremely limited and necessarily involves issues basic to the State Bar as, for example, validity and interpretation of the State Bar Act or State Bar rules; validity and interpretation of State Bar sponsored legislation; or the validity and interpretation of legislation or acts of court that can seriously affect the administration of justice and attorney-client relationships. It is also recognized that the State Bar amicus curiae participation will have greater impact on the courts if used sparingly.

Additionally, amicus curiae participation is authorized only as follows:

- (a) At the appellate level, and generally only in the highest court where an issue is likely to be determined.
- (b) When one or more significant legal questions are involved and a State Bar amicus curiae pleading would constitute a significant contribution to the determination of those questions.
- (c) Where the position sought to be advanced is consistent with previous policy of the State Bar or is a matter of compelling public interest which the Board of Trustees then adopts as policy of the State Bar consistent with its due charge. Where the pleading amicus curiae would not support a previous policy of the State Bar, the Board of Trustees shall first determine whether the position sought to be advanced ought to be the policy of the State Bar; and the board

will make a determination of whether the policy position of the State Bar should be advanced in that particular case through a pleading amicus curiae.

- (d) The court may consider the opinion of the State Bar on the matter in question to be enlightening and persuasive.
- (e) The resolution of the issue before the particular court involved will have an impact upon the development of the law.
- (f) The filing of the pleading is feasible, including timing, availability of counsel and expenses.
- (g) The filing of any pleading on behalf of the State Bar will be in compliance with the governing rules of court.

(Source: Board of Governors' Resolution, May 1981.)

Section 4 *Application Procedures*

- (a) Any person or entity, including any component part of the State Bar, requesting State Bar participation as an amicus curiae in litigation shall file an application and three (3) copies thereof with the secretary in the San Francisco office of the State Bar. The secretary shall furnish the general counsel one (1) copy of the application and all accompanying documents for review, and shall furnish copies of the application to, and invite comment from State Bar entities which the secretary shall deem to have an appropriate interest, and which have not been previously furnished the application by the requestor.

When the application is calendared for board committee and, in turn, board consideration, it shall be an open agenda item unless general counsel certifies that the matters to be discussed will:

- (1) Fall within the categories of matters specified in the lettered subdivisions of § 6026.5 of the Business and Professions Code;
 - (2) Fall within the attorney-client privilege, or are otherwise privileged from disclosure; or
 - (3) Involve information received or held by the State Bar that is protected by the California constitutional guarantee of privacy.
- (b) In order to make a well-reasoned decision as to whether amicus curiae participation should be undertaken by the State Bar, the board committee having jurisdiction and, in turn, the Board of Trustees, should be fully informed by the requestor as to the following application:

- (1) The name of the case, including the name and location of the court in which the pleading would be filed.
- (2) The names of the parties and their counsel and the names of all the known or anticipated amicus curiae and their counsel.
- (3) The name, address and phone number of the person making the request, along with those of the person(s) or entity(ies) on whose behalf the request is being made, should be set forth.
- (4) A designation of whether the requestor is a party in the litigation should be made. If not a party, the nature of the relationship between the requestor applying and the parties of the litigation, as well as the requestor's substantive concern with the issues being litigated, should be stated. If not a party, the requestor must indicate whether the party on whose behalf the State Bar is to intervene knows and consents to the State Bar's being asked to participate as amicus curiae.
- (5) If the court in which the litigation is pending is not designated as either the United States or California Supreme Court, the requestor must state compelling reasons why the State Bar should join in at another stage of litigation in spite of its general policy to refrain from so doing.
- (6) A statement of the principle of law or legal points to be supported, with a full explanation of the requestor's reasons for believing that the case is an appropriate one for State Bar involvement and why there is a necessity for additional argument on the law or legal points specified.
- (7) A statement of the undisputed and disputed facts in the case, including present status of the litigation.
- (8) Statement or full disclosure of any professional or personal interest in the matter of any proponent of the application.
- (9) The briefing schedule, including the date by which the pleading must be filed and a copy of the applicable rule of court or procedure regarding the timing of the filings.
- (10) A statement relating significant contributions it is believed the State Bar might make by filing a pleading in the particular case.

Appropriate and relevant pleadings, court decisions and orders entered in the case should also be submitted along with the application. The requestor must supply the State Bar with the record of the case, including past opinions and pleadings, to the extent possible at the time the request is made. The

requestor will be charged with supplying the State Bar with additions to the record until a decision on whether to file the amicus curiae pleading is made.

- (c) Only requests that are timely submitted to the State Bar will be considered. The requestor must approach the State Bar for its support as soon as possible after the record or pleadings are filed in the court in which the litigation is then pending. If the application submitted is complete, the matter will be placed on the next available board committee and Board of Trustees agenda, provided that independent evaluation and analysis of the record has been completed by the State Bar and agenda deadlines can be met. If the time to respond to the request is insufficient to allow the State Bar to make an independent evaluation of the record and the strengths and weaknesses of the position which it is being encouraged to take, the State Bar may refuse to consider the request in the first instance.
- (d) The requestor should understand that the State Bar may invite comment from appropriate State Bar committees and sections and interested parties, including opposing parties in the litigation, prior to final board action; that the State Bar is not precluded from taking any position on the issues presented by the litigation, even one or more which might be contrary to the one of the requestor; and that approval by the State Bar Board of Trustees is required for amicus curiae filings and would be conditioned on the board's decision to become, or even remain, involved.

(Source: Board of Governors' Resolution, May 1981, December 1997.)

Section 5 Appearance and Approval by Office of General Counsel

Normally, if amicus curiae is authorized, the appearance shall be made by general counsel or under general counsel's direction. In other instances, the pleading will only be filed following the approval of general counsel as to form and consistency with State Bar positions, policies, practices, rules and regulations.

(Source: Board of Governors' Resolution, May 1981.)

Article 2

STATE BAR SECTIONS

Section 1 Amicus Curiae Participation by Sections

Subject to the requirements in article 1 of this chapter, a State Bar Section may submit a brief and participate as amicus curiae in the Section's own name upon approval by the Board of Trustees if:

- (a) The Court has requested participation by the Section or the State Bar, which has then referred the matter to the Section; or
- (b) The special knowledge, training, experience or technical expertise of the Section would assist the court in deciding the matter and the Section's amicus curiae brief would bring to the attention of the Court relevant matter not already raised or adequately addressed. Sections should avoid advancing matters that burden the Court.

As a sub-entity of the State Bar, a judicial branch agency, the matter presented by a Section should be neutral in its content and tone. Partisan advocacy is disfavored and should be avoided.

Section 2 Avoiding Inconsistent Positions; Request by Executive Committees; Conflict of Interest

A request under this chapter should avoid the presentation of matters that are inconsistent with policies of the State Bar or with positions of other Sections or State Bar committees. The Executive Committee of a Section authorizing the request should seek consensus among its members.

- (a) A Section's request under this chapter must be authorized by the Section's Executive Committee. Only requests submitted to the Board by the Section's Executive Committee are eligible for consideration.
- (b) A member of an Executive Committee who or whose law firm is a party or is representing a party in the underlying litigation is disqualified from voting in the Executive Committee's decision to request amicus curiae participation.

Section 3 Disclaimer

Unless otherwise directed, the application and amicus curiae briefs of any Section authorized by the Board must include language explaining that (1) the position is only that of the Section and has not been adopted by either the Board of Trustees or the overall membership of the State Bar of California; (2) membership in State Bar Sections is voluntary; and (3) funding of Section activities, including amicus curiae participation, is obtained entirely from voluntary sources pursuant to California Business and

Professions Code section 6031.5 and do not involve the expenditure of mandatory bar dues.

(Source: Board of Governors' Resolution, July 2003.)

Section 4 Side Letter for Sections Amicus Participation

- (a) A Proponent would identify an issue for a possible Amicus brief ("Project") and prepare an Abstract of the position to be taken. The Proponent would also prepare a complete Application describing how the Project would meet the Amicus Policy. The Application should follow where applicable the provisions of section 4b of article 1 of the State Bar's general amicus policy; however, the Application need include only a copy of the final decision or order that is the subject of appeal and such other documents as may be necessary to support the Application
- (b) The Executive Committee of the Proponent's Section will review the Abstract in light of the Amicus Policy and make a determination about whether the Project should be forwarded for further action.
- (c) If the Executive Committee so recommends, the Application would be forwarded simultaneously to the Board Executive Committee (Board ExCom), to the relevant State Bar Committees and to the Executive Committee Chairs of the other Sections. Any Executive Committee of any Section or any State Bar Committee may comment on the Application to the Board Excom.
- (d) Board ExCom will review the Application and any comments of Sections and Committees. The Proponent and any commenting Section or Committee may informally work together to resolve the comments.
- (e) Board ExCom is authorized by the Board of Trustees to act on its behalf on litigation matters in between regular meetings of the Board. If Board ExCom approves the Application (which may occur despite unresolved comments), the Proponent will then draft the Brief.
- (f) The Chair of Board ExCom and the General Counsel or her designee will review the final draft, work with the Proponent if necessary, and permit the Proponent to file the Amicus Brief in the name of the Section of the State Bar of California.

(Source: Board of Governors Resolution July 26, 2003, adopted in principle; Task Force on Sections Resolution adopted March 25, 2004, reported to the Board March 27, 2004.)

TAB 3.5

LEGISLATIVE POLICIES AND PROCEDURES

Article 1 LEGISLATIVE POLICIES AND PROCEDURES FOR LEGISLATIVE POSITIONS OF BOARD OF TRUSTEES

- Section 1 Vote on Legislative Positions*
- Section 2 Keller Parameters*
- Section 3 Funding*

Article 2 LEGISLATIVE POLICIES AND PROCEDURES FOR SECTIONS AND COMMITTEES

- Section 1 Review of Sections and Committees Affirmative Legislation Proposals*
- Section 2 Time for Board Review of Section Affirmative Legislative Proposals*
- Section 3 Germaneness Standard for Sections*
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- Section 5 Disclaimers*
- Section 6 Funding of Legislative Activities of Committees and Certain Other State Bar Entities*
- Section 7 Standards and Guidelines for Legislative Activities of Committees and Certain Other State Bar Entities Funded from the Lobbying Deduction Fund*
- Section 8 Evaluation of Interim Policies*

Article 1
LEGISLATIVE POLICIES AND PROCEDURES FOR
LEGISLATIVE POSITIONS OF BOARD OF TRUSTEES

Section 1 *Vote on Legislative Positions*

- (a) Consideration of a legislative position by the Board of Trustees proposed for funding from the general fund shall proceed in the following order:
 - (1) An affirmative vote by a 2/3 majority of those present concerning whether the proposed legislative position is within the parameters established by the United States Supreme Court in *Keller v. State Bar of California*;
 - (2) If the vote is affirmative, a second affirmative vote by 2/3 of those present that the specific legislative political position is adopted.

(Source: Board of Governors' Resolutions, December 1999, April 2000, June 2001.)

- (b) A legislative position by the Board of Trustees proposed for funding from the lobbying deduction fund must be adopted by an affirmative vote by 2/3 of those present.

(Source: Board of Governors' Resolution, June 2001.)

Section 2 *Keller Parameters*

All legislative positions taken by the Board of Trustees funded from State Bar general funds shall be within the parameters established by *Keller v. State Bar*, 496 U.S. 1 (1990).

(Source: Board of Governors' Resolutions, December 1999, April 2000, June 2001.)

Section 3 *Funding*

- (a) Legislative lobbying funded by the mandatory portion of the annual membership fee is restricted to bills pertaining only to legislation fixing the annual membership fee, the State Bar's functions in professional regulation and ethics, or the State Bar's administration and operations.
- (b) Legislative positions taken onto the Board of Trustees' legislative program are funded solely from State Bar funds. This subdivision cannot be amended or repealed without notice to the Executive Committee of the Conference of Delegates.

(Source: Board of Governors' Resolutions, February 2000, August 2000.)

Article 2

LEGISLATIVE POLICIES AND PROCEDURES FOR SECTIONS AND COMMITTEES

Section 1 Review of Sections and Committees Affirmative Legislation Proposals

- (a) Each affirmative legislative proposal of sections and committees shall be delivered to staff designated by the Executive Director, either:
 - (1) Sixty (60) days before the meeting of the Board Committee on Stakeholder Relations, or successor committee, at which it will be submitted if it will be submitted other than at the first board meeting of the board year following the organization meeting.
 - (2) On or before August 1, if it is to be submitted at the first board meeting of the board year following the organization meeting to the Board Committee on Stakeholder Relations, or successor committee.

The proponent shall identify a permanent contact person to whom sections and committees may direct comment. The proposal shall identify the date of the board committee meeting at which it will be submitted.

- (b) Staff designated by the Executive Director shall circulate the proposal to all sections, all committees, the Executive Committee of the Conference of Delegates, and the Office of Governmental Affairs. Any section or committee may request copies of all proposed amendments.
- (c) The only exception to this rule is legislation regarding which true urgency exists, and in case of urgency, the proponent shall, when the proposal is delivered to the Board Committee on Stakeholder Relations, or successor committee, also deliver it to the Office of Governmental Affairs, the Executive Committee of the Conference of Delegates, all sections and those committees within the purview of which the proposal may fall.

(Source: Board of Governors' Resolutions, August 1986, October 1988, December 1989, June 1999, June 2001.)

Section 2 Time for Board Review of Section Affirmative Legislative Proposals

The board shall schedule a meeting of the board as soon as practical following the State Bar's Annual Meeting to consider section legislative program issues for the forthcoming year, with the goal of final approval by the board on or before October 31.

(Source: Board of Governors' Resolutions, June 1999.)

Section 3 Germaneness Standard for Sections

A section may use voluntary dues to take positions on bills of others or make affirmative legislative proposals that are germane to the designated practice area of the section,

and pursuant to the authority granted under Business and Professions Code section 6031, under the following germaneness standard:

- (a) The matter is necessarily or reasonably related to the regulation of the legal profession or improvement of the quality of legal services available to the people of the state, or
- (b) The matter requires the special knowledge, training, experience or technical expertise of the section, or
- (c) The position advocated, while not specifically related to the regulation of the legal profession or improvement of the quality of legal services, would promote clarity, consistency or comprehensiveness in the law.

(Source: Board of Governors' Resolutions, Original source unknown, reaffirmed June 2001.)

Section 4 Review of Proposed Positions on Bills of Others

- (a) A copy of a proposed position of a section/committee must be sent to General Counsel, in addition to the current recipients of proposed positions [Office of Government Affairs, and the liaison from the Board Committee on Legislative and Court Relations, or successor committee]; no proposed position shall be transmitted to a legislative body or official or government agency or official unless, at a minimum, it is approved by the Office of General Counsel and the Office of Governmental Affairs; this review should occur within five (5) business days; reviewers shall have the authority not to transmit proposed positions based upon a judgment that the State Bar should not take a position on a particular bill.
- (b) The above procedure applies to a proposed position of a section/ committee on a state or federal bill of others or on a public agency rule, regulation or guideline. It also applies to a section/committee response to a request of a legislator or agency official for comment on a specific bills, rule, regulation or guideline. The text or outline of section/committee testimony on a bill of others or a proposed agency rule, regulation or guideline shall also be approved pursuant to these procedures, if a section/committee proposed written position on the same subject has not been previously approved pursuant to these procedures.
- (c) Sections may attend meetings of the California Law Revision Commission and comment verbally and in writing upon drafts of proposed legislation prepared by the Commission without being required to submit to the five day review by General Counsel, or other reviewers, generally required for positions on bills of others.
- (d) Proposed letters regarding bills of others on which a section or committee takes no position, but offers technical comments only, may be transmitted to

the Legislature if none of the required reviewers (Liaison from the Board Committee Legislative and Court Relation, or successor committee; Office of Governmental Affairs; General Counsel) objects to its transmittal within five (5) business days.

(Source: Board of Governors' Resolutions, December 1990, August 1991; Board Committee on Legislative and Court Relations charter, June 2001.)

Section 5 *Disclaimers*

Legislative positions taken by State Bar entities must include the following disclaimers, in boldface type:

- (a) For sections:

The position is only that of the _____ SECTION of the State Bar of California. This position has not been adopted by either the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California.

Membership in ____ Section is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

- (b) For legislative positions resulting from legislative activities of committees and other State Bar entities that are paid for from the general fund:

This position is only that of the State Bar of California's [STANDING COMMITTEE ON ____]. This position has not been adopted by the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California.

- (c) For legislative positions resulting from legislative activities of committees and other State Bar entities that are paid for from the lobbying deduction fund:

This position is only that of the State Bar of California's [Standing Committee on ____]. This position has not been adopted by the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.

- (d) For positions resulting from Board of Trustees' legislative activities paid for from the lobbying deduction fund:

Board of Trustees' activities relating to this position are funded from voluntary sources.

(Source: Board of Governors' Resolutions, December 1999, February 2000, April 2000, April 2001.)

Section 6 *Funding of Legislative Activities of Committees and Certain Other State Bar Entities*

- (a) The legislative activities of committees and other State Bar entities that receive funding from the general fund, other than legislative activities pertaining to fixing the annual membership fee, the State Bar's functions in professional regulation and ethics, or the State Bar's administration and operations, shall be paid for out of the fund created by calculating the product of the number of members who choose not to take the lobbying deduction, multiplied by \$5 ("lobbying deduction fund");
- (b) To the extent funds are available in the lobbying deduction fund, all legislative activities of committees and other State Bar entities that receive funding from the general fund shall be paid for out of the lobbying deduction fund.

(Source: Board of Governors' Resolution, April 2001, June 2001.)

Section 7 *Standards and Guidelines for Legislative Activities of Committees and Certain Other State Bar Entities Funded from the Lobbying Deduction Fund*

- (a) Legislative activities paid for out of the lobbying deduction fund of committees and other State Bar entities that receive funding from the general fund must be germane to the charge of the committee or other entity and meet the following germaneness standard:
 - (1) The matter is necessarily or reasonably related to the improvement of the quality of legal services available to the people of the state; or
 - (2) The matter is related to the improvement of the functioning of the courts, judicial efficacy and efficiency;
- (b) In interpreting this germaneness standard, the following guidelines should be applied:
 - (1) Legislative comments should reflect the special knowledge, training, experience or technical expertise of the State Bar entity;
 - (A) Involvement in or comments on legislative matters that are ideological or highly controversial or divisive within the bar or the society are disfavored;

- (B) The potential impact of comments and other legislative activities of the State Bar entity on the State Bar and the rest of the bar's legislative program should be considered.

(Source: Board of Governors' Resolution, April 2001.)

Section 8 Evaluation of Interim Policies

The interim policies set out in sections 6 and 7 shall be evaluated upon completion of the current legislative session.

(Source: Board of Governors' Resolution, April 2001.)

TAB 3.6

PUBLIC COMMENT

TITLE 1. GLOBAL PROVISIONS

DIVISION 2. PUBLIC COMMENT

Rule 1.10 Public Comment

Rule 1.11 Availability of Public Comments

Staff and Public Comment

TITLE 1. GLOBAL PROVISIONS
DIVISION 2. PUBLIC COMMENT

Rule 1.10 Public Comment

- (A) Proposals for the Rules of the State Bar of California are circulated for public comment before adoption, amendment, or repeal by the Board of Trustees. The State Bar also makes available for public comment its proposals for the California Rules of Court. Proposals are circulated for a forty-five day period, which can be shortened to a minimum of 30 days or extended to a maximum of 90 days, as designated by the board.
- (B) Public comment is not required
 - (1) to correct clerical errors; clarify grammar; improve organization; conform to specific changes in a law; update references or citations; or make similar editorial changes;
 - (2) to modify a proposal that has been circulated for public comment when the board deems the modification non-substantive or reasonably implicit in the proposal; or
 - (3) to add or modify an appendix to these rules.
- (C) The board may determine that an emergency requires it to adopt, amend, or suspend a rule on an interim basis without first circulating it for public comment. No interim measure may remain in effect for more than 120 days.
- (D) The adoption, amendment, or repeal of a rule becomes effective as of the date specified by the board. If it specifies no date, the date of its action is the effective date.

(Source: State Bar Rule 1.10 adopted effective July 20, 2007; amended effective March 7, 2008; amended effective January 1, 2012.)

Rule 1.11 Availability of Public Comments

Public comment provided to the board regarding a rule proposal is available upon request, subject to a reasonable charge for processing.

(Source: Board of Governors' Resolutions January 1990, September 1996, December 2002, State Bar Rule 1.11 adopted effective July 20, 2007.)

Staff and Public Comment

In appropriate circumstances and in accordance with the State Bar's Public Comment Rules, the Board shall seek staff and public comment on issues being considered by the State Bar.

(Source: Board of Governors' Resolutions August 2000: Governance Principle 4.4; December 7, 2002 [Public Comment Rules].)

TAB 3.7

PUBLIC COMMUNICATIONS

Article 1 PUBLICATIONS

- Section 1 Web Site Advertising Policy*
- Section 2 Delegation of Authority to Execute Copyright Releases*
- Section 3 Social Media Policy¹*

Article 2 PUBLIC COMMUNICATIONS

- Section 1 Membership Lists from Other Entities*
- Section 2 State Bar of California Membership List Policy*
- Section 3 Lists of Certified Specialists*

¹ Phase II Proposed Change: Request board adoption of internal Social Media Policy.

Article 1 PUBLICATIONS

Section 1 Web Site Advertising Policy

It is the policy of the State Bar of California to use its Web site to meet and promote the goals of the State Bar's Long Range Strategic Plan by:

- (a) providing a wide array of services and benefits to members that meet their professional development, business, and personal needs;
- (b) using technology effectively and efficiently to support all aspects of State Bar operations;
- (c) facilitating communication among members of the bar;
- (d) promoting greater member and public access to the State Bar's services;
- (e) enhancing the administration of justice in California; and
- (f) generating funding sources authorized by Business and Professions Code section 6001.

Advertising will be permitted on pages of the State Bar Web site related to member services and benefits, the California Bar Journal pages, and the Sections' members' pages.

An "advertisement" for purposes of this policy means any display ad, banner, logo, icon, photo, link, or text (including any hypertext link associated with any of the foregoing) representing an entity other than the State Bar, or any of its sub-entities (such as Sections, boards, commissions, committees, etc.), or representing a product or service of such an entity. Advertisements may be placed or permitted only on the Web site pages enumerated in this policy.

The Executive Director is authorized to develop all necessary policies and procedures necessary to implement this policy.

(Source: Board of Governors' Resolution, September 1996, March 2004, July 2008.)

Section 2 Delegation of Authority to Execute Copyright Releases

For the purpose of facilitating the granting of requests for permission to reprint and distribute printed materials in which the State Bar of California owns copyrights for educational purposes, the board authorizes the executive director or his or her designee to execute appropriate releases on behalf of the State Bar in form approved by general counsel.

(Source: Board of Governors' Resolution, February 1982.)

Section 3 Social Media Policy²

² Phase II Proposed Change: Request board adoption of internal Social Media Policy.

Article 2
PUBLIC COMMUNICATIONS

Section 1 *Membership List from Other Entities*

No employee or agent of the State Bar shall release to third persons, including governmental entities, any membership list of, or any part of any membership list of, a lawyer organization which has been furnished to the State Bar by said organization, unless authorized by the Board of Trustees, provided that, in advance of any action of the Board of Trustees the lawyer organization having provided the list shall be advised of the request for the list or a part thereof and afforded an opportunity to object.

(Source: Board of Governors' Resolution, June 1983.)

Section 2 *State Bar of California Membership List Policy*

This policy governs the provision of the State Bar's membership list to third parties for purposes of providing promotional materials, marketing services and products or soliciting funding or support of activities, or other information that may be of benefit to members of the State Bar and that further the State Bar's own public purposes.

- (a) Except where otherwise specifically provided herein, the State Bar's membership list consists of names and addresses for all active members of the State Bar, except for those who have requested that their names be deleted from the list.
- (b) The list may be provided in electronic form or hard copy to the following entities or individuals for the purposes indicated which hereby are approved by the State Bar as furthering its own public purposes:
 - (1) All State Bar of California approved MCLE providers and providers of MCLE approved activities for purposes of marketing those activities to the members.
 - (2) Underwriters, brokers and administrators of the State Bar approved insurance programs for marketing, billing and claims purposes, and other purposes and duties related to these programs. The list may include inactive members and judges. Date of birth and date of admission may be provided for use in selecting the appropriate type of insurance product a member may be interested in.
 - (3) Local, national and specialty associations of attorneys that are qualified as tax exempt under Section 501(c) of the Internal Revenue Code for solicitation of membership or funds to support the association's activities in furtherance of the State Bar's public purposes. Date of admission may be provided for marketing purposes only.

- (4) Lawyer referral services that are approved by the State Bar and operated in compliance with the Minimum Standards for a Lawyer Referral Service in California for recruitment and solicitation of funds to support activities in furtherance of the State Bar's public purposes.
- (5) Legal aid societies that make available free or low cost legal services to the indigent or those of low income, or organizations formed for charitable or other public purposes which furnish legal services to persons in respect to their civil or constitutional rights that are qualified as tax exempt organizations under Section 501(c) of the Internal Revenue Code for solicitation of membership or funds to support activities in furtherance of the State Bar's public purposes.
- (6) Courts and other government entities.
- (7) Potential candidates (and designees) for election to the State Bar Board of Trustees, for purposes related to the candidacy, provided that the list is limited to active members in good standing, whose principal place of business is located within the potential candidate's State Bar district and provided that the list is requested no earlier than the date that the Secretary announces the Board of Trustees election schedule and no later than the date the eligibility list closes.
- (8) Candidates for election to the State Bar Board of Trustees for purposes of their candidacy, from the date the eligibility list closes until the last day for voting.
- (9) Established publishers of legal directories for purposes of preparing written hard copy or electronic directories who agree to:
 - (A) not engage in the sale of mailing lists or labels;
 - (B) not release the directory or any portion thereof in a form other than the directory format;
 - (C) include a written statement notifying users that use of the information contained therein is limited to the subscriber of the directory; and
 - (D) prohibit reproduction of any portion in any form without the permission of the publisher and the State Bar.
- (10) The Foundation of the State Bar of California to aid in matters pertaining to the advancement of the science of jurisprudence or the improvement of the administration of justice and for the solicitation of funds to support activities in furtherance of the State

Bar's public purposes. The list provided may include inactive members.

- (c) Entities or individuals approved under this policy, wishing to purchase the list must file with the State Bar a signed agreement for use of the list and a signed Hold Harmless agreement on forms provided by the State Bar. The agreement for use may provide for the multiple use of the list during the effective dates of the agreement.
 - (1) Entities or individuals must also provide, in advance of each request, a written statement of the use to be made of the list and a mock up or copy of each proposed mailing piece for State Bar approval.
 - (2) Upon approval, the State Bar will fulfill the request and bill the requesting entity or individual according to the current fee schedule for each use of the membership list.
 - (3) The requesting entity or individual must agree to include a designated State Bar staff name and address in all mailings to assure that a copy of items mailed using the list are sent to the State Bar.
- (d) At the time of admission, each member of the State Bar shall be advised of this policy and of the purposes for which the member's name and address may be released. At that time, or at any time thereafter, the member may elect to have his or her name deleted from all lists released to outside entities under this policy if the member so chooses. In addition, notice of this policy and the member's right to remove his or her name from the membership lists under this policy, shall be provided to each member in the annual dues statement and other appropriate communications, including the State Bar's Web site and other electronic communications. The notice shall note the simple procedure by which a member may exercise his or her right to prohibit or restrict, at the member's option, the sale or disclosure of member's name and address under this policy.
- (e) Requests for exceptions to the terms of this policy shall be referred to the Executive Director of the State Bar or designee if so delegated.

(Source: Board of Governors' Resolutions January 2001, March 2002, September 2004, September 2008.)

Section 3 Lists of Certified Specialists

Names of Certified Specialists--Public Communications

The Board of Trustees authorizes the staff to advise inquirers that a person is or is not a certified specialist, whether or not the specialist has chosen to "opt-out" of the published list of specialists.

(Source: Board of Governors' Resolution, October 1982.)

Release of List of Certified Specialists

The Board of Trustees authorizes release of lists of certified specialists or a portion thereof provided that such lists shall contain the following caveats:

- (a) The list is current only as of a specific date and subject to subsequent deletions and additions.
- (b) No lawyer is required to obtain a specialty certificate before the lawyer can practice law in the specialty field. Any lawyer, alone or in association with any other lawyer has the right to practice in any field of law.
- (c) The list does not purport to include all attorneys qualified to practice in the particular field, and certified specialists may choose not to be listed.

(Source: Board of Governors' Resolution, October 1982.)

Deletion of Names From List--Voluntary

Any certified specialist may, upon written notice to the Board of Legal Specialization, request that his or her name be deleted from the list of certified specialists which is distributed to the public.

(Source: Board of Governors' Resolution, October 1982.)

Purchase of List

Purchasers will be required to pay a charge for the list which equals the cost of reproduction, plus postage and handling charges. Certified specialists may be sent one (1) copy of the current list of certified specialists when certified, as well as revisions which may occur from time to time, without charge.

(Source: Board of Governors' Resolution, October 1982.)

Yellow Pages Directory Listing

The State Bar shall maintain a heading entitled "State Bar of California Certified Specialists" in "yellow pages" directories throughout California.

(Source: Board of Governors' Resolution, January 1993.)