

AGENDA ITEM

JULY 10 - Board of Trustees – June 23, 2016 Open Minutes

THE STATE BAR OF CALIFORNIA

OPEN MINUTES

BOARD OF TRUSTEES MEETING

LOS ANGELES, CALIFORNIA

June 23, 2016

The Board of Trustees of The State Bar of California convened in open session at 10:09 am at the State Bar of California, 845 S. Figueroa Street, Board Room, 2nd Floor, Los Angeles, California, Thursday, June 23, 2016, David Pasternak presiding.

The following members of the Board of Trustees were present: Janet Brewer, Michael Colantuono, Terry Flanigan, James Fox, Miriam Krinsky, Renée LaBran, Jason Lee, Joanna Mendoza, Stacie Spector, Hernán Vera (absent for roll call) and Terry Wiley.

The following members of the Board of Trustees were absent: Glenda Corcoran, Dennis Mangers, Danette Meyers, Gwen Moore, Brandon Stallings and Todd Stevens.

The following members of staff were present: Teri Greenman, Randall Difuntorum, Vanessa Holton, Mimi Lee, Elizabeth Parker (by phone) and Leah Wilson.

Also present: Justice Lee Edmon, Chair, Commission for the Revision of the Rules of Professional Conduct; members of the Rules Revision Commission: George Cardona, Robert Kehr, Howard Kornberg, Tobi Inlender (public member), James Ham, Daniel Eaton, Toby Rothschild and Prof. Kevin Mohr, Western State University College of Law.

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. There was no public comment.
- 30 President Pasternak reported that on June 17 he had provided the official State Bar Welcome at the 6th Annual California Law Academy Support Counsel Summit for the attending California Partnership Academy Advisory Board members and teaching teams from the current 16 law academies.

He noted that the State Bar Council on Access & Fairness and the California Department of Education (CDE) partner each year to convene the Summit here at the State Bar to provide CDE and COAF updates, training on various model programs implemented at the academies, and professional development for all law academy participants.

He explained that the program is for high school students in primarily low income areas and has been in existence for almost 7 years. It is geared towards helping students to graduate high school and directing them towards professional careers in the law.

He continued stating that through their work, the Law Academy helps to change the lives of individual students and diversify the profession. Mr. Pasternak said it was unfortunate the press was not in attendance as this is an excellent example of the important work the State Bar does.

Mr. Pasternak thanked the Trustees for all of their hard work with respect to the special board working groups on workforce planning implementation and the Chief Trial Counsel Search Committee. He expressed concern about an amendment to AB 2878, the State Bar's fee bill that would reduce the size of the board, as Trustees already devote a substantial amount of time to the work of the Bar and this would increase the individual Trustee workload.

40 There was no report by Ms. Parker, the Executive Director.

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

I. Resolution authorizing public comment on 42 proposed rules.

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, the following proposed new or amended Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached: rules 1.0.1, 1.2, 1.2.1, 1.4, 1.4.1, 1.4.2, 1.6, 1.8.1, 1.8.2, 1.8.3, 1.8.5, 1.8.6, 1.8.7, 1.8.8, 1.9, 1.13, 1.16, 1.17, 2.4, 2.4.1, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 4.1, 4.4, 5.3.1, 5.4, 5.5, 5.6, 6.3, 6.5, 8.1, 8.1.1, 8.2, and 8.5; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

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

Upon motion made, seconded and unanimously adopted, it was

II. Resolutions authorizing public comment on the following 6 groups of proposed rules.

Proposed Rules 4.2 and 4.3 (re ex parte communication)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, the following proposed new or amended Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached: rules 4.2 and 4.3; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

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

Upon motion made, seconded and unanimously adopted, it was

Proposed Rules 1.1, 1.3, 5.1, 5.2, and 5.3 (re competence/supervision/diligence)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, the following proposed new or amended Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached: rules 1.1, 1.3, 5.1, 5.2, and 5.3; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

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

Upon motion made, seconded and unanimously adopted, it was

Proposed Rules 7.1 – 7.5 (re advertising/solicitation)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, the following proposed new or amended Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached: rules 7.1, 7.2, 7.3, 7.4, and 7.5; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

All members present and recorded on the roll-call slip voted yes except for Stacie Spector who was absent for the vote.

Upon motion made, seconded and unanimously adopted, it was

Proposed Rules 1.5, 1.5.1, 1.15 (re fees/client trust accounting)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, the following proposed new or amended Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached: rules 1.5, 1.5.1, and 1.15; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

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

Upon motion made, seconded and unanimously adopted, it was

Proposed Rules 1.8.11 and 1.10 (re general imputation/screening)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, the following proposed new or amended Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached: rules 1.8.11 and 1.10; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

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

Upon motion made, seconded and unanimously adopted, it was

Proposed Rules 1.11 and 1.12 (re special screening for government and judicial personnel)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, the following proposed new or amended Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached: rules 1.11 and 1.12; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

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

Upon motion made, seconded and unanimously adopted, it was

III. *Resolutions authorizing public comment on the remaining 7 individual proposed rules.*

Proposed Rule 1.0 (purpose of rules)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, proposed rule 1.0 of the Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

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

Upon motion made, seconded and unanimously adopted, it was

Proposed Rule 1.7 (current client conflicts)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, proposed rule 1.7 of the Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

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

Upon motion made, seconded and unanimously adopted, it was

Proposed Rule 1.8.9 (foreclosure sale)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, proposed rule 1.8.9 of the Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

All members present and recorded on the roll-call slip voted yes except for Janet Brewer who voted no.

Upon motion made, seconded and unanimously adopted, it was

Proposed Rule 1.8.10 (sex with client)

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, proposed rule 1.8.10 of the Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

All members present and recorded on the roll-call slip voted yes except for Terry Flanigan and Miriam Krinsky who voted no.

Upon motion made, seconded and unanimously adopted, it was

Proposed Rule 1.14 (impaired client)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, proposed rule 1.14 of the Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

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

Upon motion made, seconded and unanimously adopted, it was

Proposed Rule 8.4 (misconduct)

RESOLVED, that the Board of Trustees authorizes staff to make available for public comment for a period of 90-days, proposed rule 8.4 of the Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

All members present and recorded on the roll-call slip voted yes except for James Fox and Miriam Krinsky who were absent for the vote.

Upon motion made, seconded and unanimously adopted, it was

Proposed Rule 8.4.1 (discrimination)

RESOLVED, that the Board of Trustees directs staff to make available for public comment for a period of 90-days, proposed rule 8.4.1 of the Rules of Professional Conduct prepared by the Commission for the Revision of the Rules of Professional Conduct, in the form attached; and an alternative version to be prepared by staff in accordance with the discussion of the Board; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

All members present and recorded on the roll-call slip voted yes except for Jason Lee and Terry Wiley who voted no and Stacie Spector who was absent for the vote.

Upon motion made, seconded and unanimously adopted, it was

Proposed ABA Model Rule 8.3

RESOLVED, that the Board of Trustees directs staff to make available for public comment for a period of 90-days, proposed ABA Model rule 8.3. in accordance with the discussion of the Board; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to conduct a public hearing on the proposed new or amended Rules of Professional Conduct; and it is

FURTHER RESOLVED, that this authorization for release for public comment and authorization to conduct a public hearing is not, and shall not be construed as, a statement or recommendation of approval of the proposed new or amended Rules of Professional Conduct.

All members present and recorded on the roll-call slip voted no except for Joanna Mendoza and Hernán Vera who voted yes and Stacie Spector who abstained.

702 There was no action on this item.

Ms. Parker provided a brief status update on AB 2878. She said that recent discussions have been productive, but are ongoing and complex. Ms. Parker believes the best approach is to stand back and let the discussions proceed. Soon, there will be time soon for staff and the Trustees to provide input.

A Senate hearing is scheduled for June 28. Ms. Wilson will attend.

Ms. Parker will keep the Trustees apprised as developments arise.

703 There was no action on this item.

Mr. Pasternak reported that a draft of the Governance in the Public Interest Task Force report will be available for discussion at the special board meeting scheduled for July 12, 2016 in Los Angeles.

The Governance in the Public Interest Task Force will meet to finalize the report following the July 22, 2016 regular meeting of the board. The Task Force will likely continue their discussions on Saturday, July 23.

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

RESOLVED, that the Board of Trustees confirms the President's appointment of all members of the Board of Trustees to the Regulation and Discipline Committee effective immediately and through the end of the current board term.

All members present and recorded on the roll-call slip voted yes with the exception of Terry Flanigan, James Fox, Jason Lee, Hernán Vera and Terry Wiley who voted no.

The Board adjourned its meeting at 4:09 pm and went into Executive Closed Session at 4:22 pm.

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.