

AGENDA ITEM

NOVEMBER 10 - Board of Trustees – September 12, 2016 Open Minutes

THE STATE BAR OF CALIFORNIA

OPEN MINUTES

BOARD OF TRUSTEES MEETING

SAN FRANCISCO, CALIFORNIA

September 12, 2016

The Board of Trustees of The State Bar of California convened in open session at 10:04 am at the State Bar of California, 180 Howard Street, Board Room, 4th Floor, San Francisco, California, Monday, September 12, 2016, David Pasternak presiding.

The following members of the Board of Trustees were present: Janet Brewer, Michael Colantuono, Glenda Corcoran, James Fox, Miriam Krinsky, Renée LaBran, Jason Lee (via teleconference), Joanna Mendoza, Danette Meyers, Gwen Moore, Stacie Spector, Brandon Stallings, Todd Stevens and Terry Wiley.

The following members of the Board of Trustees were absent: Terry Flanigan, Hernán Vera.

The following members of staff were present: Saul Bercovitch, Dina DiLoreto, Kelli Evans, Francisco Gomez, Teri Greenman, Vanessa Holton, Elizabeth Parker, Robert Retana, Leah Wilson (via teleconference) and Pam Wilson.

Also present: Alf W. Brandt, Senior Counsel, California State Assembly Speaker, Erica Bristol (via teleconference), Member, Executive Committee of the Intellectual Property Law Section, Brett Byers, The Hawkins Company, Salena Copeland, Executive Director, Legal Aid Association of California (LAAC), Carin Fujisaki, Principal Attorney to the Chief Justice, Leora Gershenson, Assistant Chief Counsel, Assembly Judiciary Committee, Bridget Fogarty Gramme, Center for Public Interest Law (CPIL), Robert Harris, Chair, Business Law Section Executive Committee, Bill Hawkins, The Hawkins Company, Allison Merilees, Chief Counsel, Assembly Judiciary Committee, Terrie Mesa, President, Northern California Union Chapter of Service Employees International Union (SEIU), Elizabeth Rest, Vice Chair, Executive Committee of the Intellectual Property Law Section, Sean M. SeLegue, Troy M. Van Dongen, Member, Taxation Section Executive Committee, Betty Williams (via teleconference), Incoming Chair, Taxation Section Executive Committee, Richard Zitrin, Lecturer in Law, University of California Hastings College of the 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.

Mr. Pasternak welcomed Allison Merilees, Chief Counsel, Assembly Judiciary Committee, Leora Gershenson, Assistant Chief Counsel, Assembly Judiciary Committee, Carin Fujisaki, Principal Attorney to the Chief Justice and Alf W. Brandt, Senior Counsel, California State Assembly Speaker to the meeting.

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.

Pam Wilson, Senior Director, Education, urged the Board of Trustees not to make changes to the Annual Meeting without careful consideration and review of the process. Ms. Wilson stated that cancellation of the 2018 and 2019 hotel contracts essentially cancels the Annual Meeting as there are only two hotels in California that can accommodate all Annual Meeting events and they must be booked well in advance.

Mr. Pasternak introduced Sean M. SeLegue to the Board of Trustees. Mr. SeLegue was elected to serve on the Board of Trustees by attorneys in District 1. He will be sworn in on October 1, 2016 at the Annual Meeting.

Mr. SeLegue is in favor of the board seeking as much of an assessment as is possible and stressed the importance of maintaining current operations. He also mentioned the upcoming Taxation Section event and said that the alcohol policy should be studied in light of the State Bar's two missions – regulatory and professional association.

The following summarizes public comment on agenda item number 711 - Request to Supreme Court for a Special Regulatory Assessment.

Richard Zitrin, Lecturer in Law, University of California Hastings College of the Law. Professor Zitrin stated that the Office of the Chief Trial Counsel (OCTC) priorities are based on the complexity of the case, not public protection. OCTC's priority should be public protection and it should be specifically stated as such.

Salena Copeland, Executive Director, Legal Aid Association of California (LAAC) provided oral and written comments to the Board of Trustees. She stated that LAAC fully supports inclusion of funding that supports increased access to justice in California. LAAC believes strongly that the board should make funding for legal aid, the Office of Legal Services and the California Bar Foundation part of the request to the Supreme Court.

Bridget Fogarty Gramme, Center for Public Interest Law (CPIL), said that the State Bar's position on the special regulatory assessment includes trade association activities that are in direct conflict with the Supreme Court's September 8, 2016 directive to the State Bar that the assessment should be for the discipline system only.

Ms. Gramme further stated that public protection means investigating and disciplining lawyers; the State Bar has never defined public protection; and the Trustees differ on what public protection means. Additionally, CPIL believes that the Chief Justice does not agree with the State Bar's position on the antitrust issue.

CPIL requests that the State Bar comply with the Supreme Court's antitrust policy as soon as possible and request an assessment that complies with the Supreme Court's September 8 letter.

Terrie Mesa, President, Northern California Union Chapter of SEIU expressed support for a broad definition of public protection. She stated that members of the public call the State Bar not only for assistance with the discipline system, but also for many access-related issues.

The following summarizes public comment on agenda item number 712 - Policy on Event Sponsorship, Funding and Content for all State Bar Related Activities.

Sections representatives: Robert Harris, Chair, Business Law Section Executive Committee, Betty Williams (via teleconference), Incoming Chair, Taxation Section Executive Committee, Troy M. Van Dongen, Member, Taxation Section Executive Committee, Elizabeth Rest, Vice Chair, Executive Committee of the Intellectual Property Law Section, Erica Bristol (via teleconference), Member, Executive Committee of the Intellectual Property Law Section.

Sections representatives stated that the language in the alcohol policy needs to be studied in more detail and with input from the Sections. Networking events help the Sections fund their operations and provide educational opportunities and enhanced contacts with private practitioners, government lawyers and informal mentoring with experienced practitioners. The Sections urged the board to continue its support for the Sections.

30 Mr. Pasternak stated that in the past year, the Board of Trustees has brought in new leadership to specifically focus on the State Bar's public protection mission. Additionally, many new policies have been put into place to increase transparency.

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

701 Ms. Holton reported that at the State Auditor's request, the Office of General Counsel has taken on the review function for the Office of the Chief Trial Counsel.

Ms. Holton introduced the following new assistant general counsel and staff:

- Veronica Li, Administrative Specialist III
- Stefanie Miranda, Administrative Assistant II
- Joan Randolph, Legal Secretary
- Newton Knowles, Assistant General Counsel
- Carissa Andresen, Assistant General Counsel
- James Chang, Assistant General Counsel
- Nicole Pereira, Assistant General Counsel
- Sarah Cohen, Assistant General Counsel

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

RESOLVED, following publication for comment and consideration of the comments received, that the Board of Trustees approve the proposed amendments to Rules of the State Bar, Title 2, Division 4, Chapter 1 related to New Attorney Training as attached hereto, effective February 1, 2018; and it is

FURTHER RESOLVED, that no work shall begin on New Attorney Training curriculum development, or any other related expenditure of funds, until after resolution of the status of the Bar's ability to collect 2017 mandatory fees.

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

Janet Brewer left the meeting.

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

RESOLVED, that the State Bar continue to support and encourage increased pro bono participation but that it not pursue a pro bono admissions requirement at this time.

FURTHER RESOLVED, that the Board of Trustees reassess in one year whether to pursue a pro bono admissions requirement.

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

The experiential competency training requirement was deferred to the November 2016 board meeting.

Upon motion made, seconded and unanimously adopted, it was

1. ~~RESOLVED, that the Board of Trustees recommends establishment of an officer ladder and a modified board committee structure; and it is~~

No motion made regarding officer ladder because of statutory requirements and modified board committee structure is redundant (SEE: item #707).

2. FURTHER RESOLVED, that the Board of Trustees recommends establishment of an enhanced orientation and training for State Bar Trustees.

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

3. RESOLVED, that the Board of Trustees approves referral of the following recommendations as noted below.

RESOLVED, that the Board of Trustees refers the 2016 GIPITF recommendation: Assess Key Reporting Relationships, to the Regulation and Discipline Committee for report back to the Board at its January 2017 planning meeting; and it is

FURTHER RESOLVED, that the Board of Trustees refers the 2016 GIPITF recommendation: Further Clarify Public Protection Mission, to the Executive Committee for report back to the Board at its January 2017 planning meeting; and it is

FURTHER RESOLVED, that the Board of Trustees refers oversight of the 2016 GIPITF recommendation: Address the Impacts of Silo Funding, to the Stakeholders, Access to Justice, and Appointments **and Planning and Budget** Committees for report back to the Board at its January 2017 planning meeting; and it is

FURTHER RESOLVED, that the Board of Trustees refers oversight of the 2016 GIPITF recommendation: Determination of Funding Adequacy for State Bar Discipline System, to the Planning **and** Budget ~~and Audit~~ Committee, with progress reports to be provided to the Board at each of its meetings.

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

4. ~~FURTHER RESOLVED, that the Board of Trustees refers oversight of the 2016 GIPITF recommendation: Review the Committee Framework and Structure, to the Executive Committee, for report back to the Board at its October and November 2017 meetings; and it is~~

No motion made, redundant (SEE: Item #707).

705 Representatives from The Hawkins Company reported on the current status of the Chief Trial Counsel Recruitment process.

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

RESOLVED, that the Board of Trustees hereby repeals the President Emeritus policy.

All members present and recorded on the roll-call slip voted yes except for Gwen Moore and Brandon Stallings who voted no.

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

1. ~~RESOLVED, that the Board of Trustees hereby combines the Planning and Budget Committee with the Audit Committee, creating the Planning, Budget, and Audit Committee; and it is~~

No motion made.

2. ~~FURTHER RESOLVED, that, upon the combination of the Planning and Budget Committee with the Audit Committee, and the creation of the Planning, Budget, and Audit Committee, staff shall review the Board Book and make all non-substantive amendments to conform with this change; and it is~~

No motion made, board vote not necessary for staff to make non-substantive changes.

3. FURTHER RESOLVED, that the Board of Trustees hereby combines the Stakeholders and Access to Justice Committee with the Nominations and Appointments Committee, creating the Stakeholders, Access to Justice, and Appointments Committee; ~~and it is.~~

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

4. MOTION: VICE PRESIDENT TO CHAIR RAD

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

5. FURTHER RESOLVED, that the Treasurer shall serve as the Chair of the Planning, and Budget, ~~and Audit Committee; and it is.~~

All members present and recorded on the roll-call slip voted yes except for Michael Colantuono who voted no and Joanna Mendoza who abstained.

6. ~~FURTHER RESOLVED, that, upon the combination of the Stakeholders and Access to Justice Committee with the Nominations and Appointments Committee, and the creation of the Stakeholders, Access to Justice, and Appointments Committee, staff shall review the Board Book and make all non-substantive amendments to conform with this change; and it is~~

No motion made, board vote not necessary for staff to make non-substantive changes.

7. FURTHER RESOLVED, that the Board of Trustees hereby amends the charter for the Admissions and Education Committee to make that Committee's focus on preventative public protection explicit; ~~and it is.~~

All members present and recorded on the roll-call slip voted yes except for Joanna Mendoza who abstained.

8. FURTHER RESOLVED, that the Board of Trustees hereby determines that the Vice President and Treasurer shall be responsible for the annual Strategic Work Session; ~~and it is.~~

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

9. FURTHER RESOLVED, that the Board of Trustees hereby amends the Board policy on legislative liaisons, establishing a more expansive policy on legislative and communications liaisons; and it is

FURTHER RESOLVED, that the Board of Trustees hereby amends the Board Liaison Policy for State Bar Committees to 1) provide that the President is authorized to determine, at his or her discretion, which, if any, members of the Board of Trustees will be assigned to serve as liaisons to which, if any, of the State Bar standing committees, special boards, committees and commissions, thereby replacing existing Board policy, which provides that each member of the Board of Trustees will receive such an assignment;.

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

10. MOTION: TO REFER TO STAKEHOLDERS

~~2) eliminate any suggestion in the existing reimbursement policy that two members of the Board of Trustees will ordinarily be assigned to serve as liaisons to such committees; and 3) eliminate the 16 Section Executive Committees as entities that may be assigned a Board liaison, but retain the Council on State Bar Sections as one such entity; and it is.~~

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

11. FURTHER RESOLVED, that the Board of Trustees hereby directs staff to study various potential efficiencies relating to State Bar sub-entities and provide a report on the results of those studies at the Board's November 2016 meeting, as more fully described in No. 7 of the Discussion section of this Agenda Item.

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

708 Item was withdrawn.

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

RESOLVED, following revision to the authorization of release in response to public comment, the Board of Trustees authorizes staff to circulate for a 30-day period of public comment the Revised Authorization and Release, as set forth in Attachment B; and it is

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

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

710 Item was withdrawn.

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

RESOLVED, that the Board of Trustees directs the Office of General Counsel of The State Bar of California to work with the President and President-elect to file a request with the California Supreme Court for an assessment of active attorneys at a level necessary to ensure the full functioning of the State Bar's public protection functions, **to include, but not necessarily be limited to including the disciplinary system, prevention, elimination of bias and access to justice work;** and it is

FURTHER RESOLVED, that staff report back to the board on or before the November board meeting regarding the recommendations that the Attorney General be requested to appoint a qualified individual to monitor and report on the bar's progress in reforming the discipline system and formulate a policy for Supreme Court approval that the Bar must follow in identifying, analyzing and bringing to the Court any proposed Board action that implicates antitrust concerns; and it is

FURTHER RESOLVED, that the petition shall include the Bar's current and projected revenues as well as a range of options, including redirecting existing resources to the discipline system, for the Court to consider in determining, in its discretion, the appropriate interim regulatory assessment.

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

The board went into Closed Session at 3:57 p.m. The board reconvened in Open Session at 5:15 p.m.

Glenda Corcoran, Danette Meyers, Gwen Moore and Stacie Spector left the meeting.

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

RESOLVED, that the Board of Trustees hereby authorizes staff to adopt and implement the following policies, to be disseminated via an Administrative Advisory:

1. Effective immediately, no State Bar funds, other than those provided by external sponsors or non-section member dues revenue, may be used for alcohol purchases; and,
2. Effective January 1, 2017, any State Bar spending on alcohol is prohibited, irrespective of the funding source, including external sponsorship.

FURTHER RESOLVED, that the Board of Trustees refers the development of additional policy addressing meals, awards purchases, entertainment, lodging, and sponsorship to the Stakeholders, Access to Justice, and Appointments Committee, for report back to the Board at its January, 2017, meeting.

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

Mr. Pasternak and Ms. Krinsky left the meeting. Mr. Fox presided over the remainder of the meeting.

713 Item was deferred to the October 2016 board meeting.

The Board adjourned its meeting at 6:35 p.m.

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, 180 Howard Street, Board Room, 4th Floor, San Francisco, CA 94105, on Friday, November 18, 2016, at a time to be determined.