

## **AGENDA ITEM**

### **NOVEMBER 10 – Board of Trustees – July 13 & 14, 2017 Open Minutes**

Board of Trustees Meeting  
Thursday & Friday, July 13 & 14, 2017  
Open Minutes  
The State Bar of California  
845 S. Figueroa Street  
Board Room, 2nd Floor  
Los Angeles, CA

**Thursday, July 13, 2017**

**Specially set at 12:30 p.m. for adoption of Rules of Professional Conduct**

The Board of Trustees of The State Bar of California convened in open session at 12:54 p.m. at the State Bar of California, 845 S. Figueroa Street, Board Room, 2nd Floor, Los Angeles, on Thursday, July 13, 2017, James Fox presiding.

The following members of the Board of Trustees were present: Janet Brewer, Mark Broughton, Michael Colantuono, Terrance Flanigan, Renée LaBran, Jason Lee, Joanna Mendoza, Danette Meyers, Richard Ramirez, Sean M. SeLegue, Brandon Stallings, Alan Steinbrecher and Todd Stevens.

The following member of the Board of Trustees was not present: Stacie Spector

The following members of staff were present: Randall Difuntorum, Francisco Gomez, Mimi Lee, Vanessa Holton, Elizabeth Parker and Leah Wilson.

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. Fox 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.

President Fox Introduced Justice Lee Edmon, Chair, Commission for the Revision of the Rules of Professional Conduct and Randall Difuntorum, Director, Professional Competence to present the rules up for approval by the Board.

### **701- Proposed Amended Rule 5-110 of the Rules of Professional Conduct – Return from Public Comment and Request for Adoption**

On May 1, 2017, the Supreme Court of California (“Supreme Court”) issued an order on the State Bar’s request to approve proposed amendments to rules 5-110 and 5-220 of the Rules of Professional Conduct of the State Bar of California. These proposals address the special responsibilities of a prosecutor in a criminal matter. The State Bar’s request was granted in part and denied in part. Proposed rule 5-110(D) and related Discussion paragraphs concerning pretrial disclosure obligations were not approved but the Supreme Court’s order provides instructions for the State Bar’s further consideration. The Board of Trustees (“Board”) referred this matter to the Commission for the Revision of the Rules of Professional Conduct (“Commission”) for study and development of revised rule proposals. On May 30, 2017, the Board’s Committee on Regulation, Admissions and Discipline (“RAD committee”) authorized a 30-day public comment period on two alternate drafts, Alternative A and Alternative B, prepared by the Commission. One hundred and seventy-one public comments were received.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, following notice and publication for comment and upon the recommendation of the Commission for the Revision of the Rules of Professional Conduct, that the Board of Trustees adopt proposed amended Rule 5-110 of the Rules of Professional Conduct, as set forth in Attachment 1.

FURTHER RESOLVED, that staff is directed to submit the amended rule to the Supreme Court of California with a request that the rule be approved, together with a request that if approved, the amended rule be made operative on an expedited basis.

All members listed on the slip voted yes, except Mr. Stallings who voted no and Danette Meyers who abstained.

### **702 - Reconsideration of Proposed Rule 5-110(E) of the Rules of Professional Conduct – Request for Release for Public Comment**

On May 1, 2017, the Supreme Court of California (“Supreme Court”) issued an order on the State Bar’s request to approve proposed amendments to rules 5-110 and 5-220 of the Rules of Professional Conduct of the State Bar of California. These proposals address the special responsibilities of a prosecutor in a criminal matter. The State Bar’s request was granted in part and denied in part. Proposed rule 5-110(E) states the conditions that must be present before a prosecutor may issue a subpoena to a lawyer to present evidence about a current or former client. Rule 5-110(E) was not approved but the Supreme Court’s order provides instructions for

the State Bar's further consideration. The Board of Trustees ("Board") referred this matter to the Commission for the Revision of the Rules of Professional Conduct ("Commission") for study and development of revised rule proposals. This item requests that the Board circulate, for a 45-day public comment period, proposed rule amendments developed by the Commission following a study of the Supreme Court's order.

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 45-days, alternative proposals to amend the Rules of Professional Conduct concerning the ethical obligations applicable when a subpoena is issued to a lawyer to present evidence about a former or current client, as set forth in Attachment 1; 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 new or amended Rules of Professional Conduct.

All members listed on the slip voted yes.

The Board adjourned its meeting at 1:10 p.m.

**Thursday, July 14, 2017**  
**Following the special meeting for the Election of Officers**

The Board of Trustees of The State Bar of California convened in open session at 10:14 a.m. at the State Bar of California, 845 S. Figueroa Street, Board Room, 2nd Floor, Los Angeles, on Friday, July 14, 2017, James Fox presiding.

The following members of the Board of Trustees were present: Janet Brewer, Mark Broughton, Michael Colantuono, Terrance Flanigan, Renée LaBran, Jason Lee, Joanna Mendoza, Danette Meyers, Richard Ramirez, Sean M. SeLegue, Stacie Spector, Brandon Stallings, Alan Steinbrecher and Todd Stevens.

The following members of staff were present: Francisco Gomez, Vanessa Holton, Elizabeth Parker, Leah Wilson and Christine Wong.

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

Representatives of SEIU, Raquel Hines and Kimberly Kasrelivich, thanked the Board and advised that they were speaking on behalf of employees and members. The union representatives commented on the ongoing contract negotiations.

The Board went into closed session at 10:25 a.m.

#### **6010 Closed Consent Appointments**

The following items on the closed consent agenda were presented to the Board, and no objection being raised thereto, were deemed unanimously adopted.

#### **6011 - Standing, Special and Section Executive Committees, 2017-2018 Annual Appointments of Officers and Members, Part II**

RESOLVED, upon that the recommendation of the Stakeholder Relations, Access to Justice, and Appointments Committee, the Board of Trustees hereby appoints or reappoints, as the case may be, officers and members of the Standing, Special and Section Executive Committees as set forth on the forms attached, effective at the close of the 2017 State Bar Annual Meeting (September 7, 2017), or as indicated; each officer and member to serve a term expiring as indicated; or until further order of the Board, whichever occurs earlier.

#### **6012 - Appointment of Fee Arbitrator**

RESOLVED, that the Board of Trustees appoints Michelle Lunde of Chico (Bar No. 246585) to serve as arbitrator for the State Bar Mandatory Fee Arbitration Department, for a term effective immediately and expiring December 31, 2017.

#### **6013 - Appointment of Members to the Law School Council**

RESOLVED, that, pursuant to the elections held by the private ABA-approved, Accredited and Unaccredited law schools, the Stakeholders, Access to Justice and Appointments Committee recommends that the Board appoint the following members to the Law

School Council: Gilbert A. Holmes, Dean, University of La Verne College of Law, Mary Elizabeth Magill, Dean, Stanford Law School, Michael Mullins, Dean, Empire College of School of Law, and Robert K. Strouse, Dean, Taft Law School, for terms commencing September 8, 2017, and expiring upon the Board of Trustees annual meeting in September 2020.

## **6020 Closed Appointments**

The following item on the appointments agenda were presented to the Board, and no objection being raised thereto, were deemed unanimously adopted, except 6024 which was reconsidered.

### **6021 - 2017 JNE Review Committee (RJNE)**

RESOLVED, that upon the recommendation of the Board Stakeholder Relations, Access to Justice and Appointments Committee, the Board of Trustees approves appointment of Marcia Goodman as Chair of the Review Committee of the Commission on Judicial Nominees Evaluation (RJNE), for a one-year term, commencing at the close of the 2017 State Bar Annual Meeting (September 7, 2017), and expiring at the close of the State Bar Annual Meeting as indicated, or until further order of the Board, whichever occurs earlier.

### **6022 - Judicial Council, Annual Appointment of Members**

RESOLVED, upon that the recommendation of Stakeholder Relations, Access to Justice, and Appointments Committee, Board of Trustees hereby appoints Rachel Hill, Fresno, State Bar member, Judicial Council, for a three-year term commencing September 15, 2017, and expiring September 14, 2020, or until further order of the Board, whichever occurs earlier.

### **6023 - Commission on Judicial Nominees Evaluation (JNE) Annual Appointment of Officers and Members**

RESOLVED, that the Board of Trustees approve reappointment of the following officers and members to the Commission on Judicial Nominees Evaluation (JNE Commission), each for a one-year term commencing February 1, 2018, and expiring in 2019 at the close of the last business meeting of the 2018 commission, or until further order of the Board, whichever occurs earlier; and it is

<b>First-Year</b>		<b>City / District</b>	<b>Chair Evaluation</b>
1.	Albracht, Kathryn B.	Los Angeles / 2	Recommended
2.	Anderson, Sotera L.	San Diego / 4	Recommended
3.	Block, Randall G.	San Francisco / 1	Recommended

<b>First-Year</b>		<b>City / District</b>	<b>Chair Evaluation</b>
4.	Crosby, James D.	San Diego / 4	Recommended
5.	D’Orazio, Elizabeth K.	San Francisco / 1	Recommended
6.	Hastings, James G.(retired judge)	Redondo Beach / 2	Recommended
7.	Ibarra, Crisostomo G.	San Francisco / 1	Recommended
8.	Lefkowitz, Linda K. (retired judge)	Pacific Palisades / 2	Recommended
9.	Lempel, Barbara M. (public member)	Los Angeles / 2	Recommended
10.	Okcu, Niki B.	San Ramon / 1	Recommended
11.	Onyeagbako, Maureen C.	Sacramento / 3	Recommended
12.	Pritt, Maxwell V.	Oakland / 1	Recommended
13.	Quinn, Linda B. (retired judge)	San Diego / 4	Recommended
14.	Singh, Aminder	Oakland / 1	Recommended
15.	Stewart, Virginia E.	Bonita / 4	Recommended
16.	Walker, Hugh A. (retired judge)	Pleasanton / 1	Recommended
<b>Second-Year</b>		<b>City / District</b>	<b>Chair Evaluation</b>
17.	Bellas, Diane (Vice Chair)	San Rafael / 1	Recommended
18.	Fullerton, Ahtossa	San Francisco / 1	Recommended
19.	Hennenhoefler, James A.	Vista/	Recommended
20.	Jenkins, Mack E.	Los Angeles / 2	Recommended
21.	Kim, Eugene	Riverside / 4	Recommended
22.	Salvas, Adam R.	San Francisco / 1	Recommended
23.	Simpson, Thomas L.	Glendale / 2	Recommended
24.	Speer-Barash, Leesa (public member)	Carmichael / 3	Recommended
25.	Venkatesan, Siddharta M.	San Ramon /1	Recommended
26.	Yeh (Hong), Ann L.	Monterey Park / 2	Recommended
<b>Third-Year</b>			
27.	Fermino, David (vice chair)	San Francisco / 1	Chair

FURTHER RESOLVED, that the Board of Trustees approve appointment of the new members to the Commission on Judicial Nominees Evaluation (JNE Commission), as determined on July 13, 2017, each for a one-year term commencing February 1, 2018, and expiring in 2019 at the close of the last business meeting of the 2018 commission, or until further order of the Board, whichever occurs earlier.

<b>RECOMMENDED FOR APPOINTMENT</b>		
<b>PUBLIC MEMBERS</b>		<b>CITY / DISTRICT</b>
1.	Cody, Lisa	Claremont / 2
2.	Rothschild-Boros, Monica	Irvine / 4
3.	Conn, Carole	San Francisco / 1
<b>LAWYER MEMBERS</b>		<b>CITY / DISTRICT</b>
4.	Ngai, Stella J.	Oakland / 1
5.	Carrillo, Sarah J.	Sonora / 5
6.	Alexander, Daniel L.	Los Angeles / 2
7.	El-Amamy, Reema M.	Los Angeles / 2
8.	Hammon, Patrick M.	Palo Alto / 6
9.	Tsai, Jeffrey E.	San Francisco / 1
10.	Triano, Martin F.	Berkeley / 1
11.	Traicoff, Kristin A.	Sacramento / 3
<b>ALTERNATES</b>		<b>CITY / DISTRICT</b>
1.	Michalski, James W.	La Mirada / 02
2.	El-Hajj, Jeffrey B.	San Jose / 06
3.	Cruse, Gordon D.	San Diego / 4
4.	Gweon, Judith W.	Riverside / 4
5.	Insul, Alan M.	Westlake Village / 2
6.	Jex, Brent O.	Sacramento / 3
7.	Hirsch, David H.	San Luis Obispo / 2
8.	Lee, Woowon J.	Sacramento / 3
9.	Chand, Robin K.	Washington / 0

## **6024 - Committee of Bar Examiners Annual Appointments of Officers and Members**

### **Motion to reconsider conducted in closed session at 2:40 p.m.**

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

RESOLVED, that upon the recommendation of the Stakeholders, Access to Justice and Appointments Committee, the Board appoints Erika Hiramatsu, Chair, and David Torres, Vice-Chair, of the Committee of Bar Examiners, each for a term effective at the close of the 2017 Board of Trustees Meeting (September 7, 2017), and expiring at the close of the 2018 Board of Trustees Meeting, or until further order of the Board, whichever occurs earlier, and it is

FURTHER RESOLVED, that upon the recommendation of the Stakeholders, Access to Justice and Appointments Committee, the Board appoints Esther Lin, Costa Mesa; Alex Chan, Redwood City; and Bethany Peak, Bakersfield, members, Committee of Bar Examiners, each for a term effective at the close of the 2017 Board of Trustees Meeting (September 7, 2017) and expiring at the close of the 2021 Board of Trustees Meeting, or until further order of the Board, whichever occurs earlier.

All members listed on the slip voted yes, except Brandon Stallings who abstained and Danette Meyers, Richard Ramirez and Stacie Spector, who had left the meeting.

The Board resumed its open session at 12:50 p.m. with the presentation of the John Van de Kamp Memorial resolution.

Mr. Fox introduced, former Los Angeles County Counsel Andrea S. Ordin, who was present to receive the memorial resolution on behalf of the Van de Kamp family.

In 1975, then-Los Angeles County District Attorney John Van de Kamp named Ms. Ordin the county's first female assistant district attorney, the No. 3 position in the office hierarchy. Two years later, then-President Jimmy Carter appointed Ordin as the U.S. attorney for the Central District of California.

Ms. Ordin was the first woman to serve in the post and the third to serve as a U.S. attorney in the country. She rejoined Van de Kamp after he became California attorney general in 1983, and served as chief assistant attorney general in charge of the Public Rights Division.

Also present were former State Bar Presidents, Howard Miller, David Pasternak and the Honorable Jon Street. All expressed fond memories of their time with John Van de Kamp.

The memorial resolution was read and presented.

**THE STATE BAR OF CALIFORNIA HONORS  
JOHN K. VAN DE KAMP, ESQ.**

Today we mark the life and mourn the passing of our esteemed colleague John K. Van de Kamp, a renowned and well-known public servant, lawyer, mediator, arbitrator, moderator, panelist, and speaker, whose career greatly influenced the science of jurisprudence not only in California, but throughout the nation.

John K. Van de Kamp's lifelong commitment and outstanding contributions toward equality and justice for all, his dedication to his profession, his work for the protection



of the public, as well as practicing and promoting diversity and equality in the profession, preservation and improvement of our social and justice systems and the environment, was greatly admired and respected by all who know him.

Unfailing in courtesy, kindness and collegiality, John K. Van de Kamp's demeanor belied the magnitude of his contributions to the people and the legal profession. THE STATE BAR OF CALIFORNIA, upon resolution of its Board of Trustees, hereby confers this posthumous resolution on JOHN K. VAN DE KAMP, distinguished attorney, renowned environmentalist, historian, outstanding public servant, and extraordinary contributor to the legal profession.

WHEREFORE, be it resolved that the State Bar of California laments the passing of JOHN K. VAN DE KAMP, and extends to his family its deepest sympathy.

The Board resumed its closed session at 1:35 p.m.

The Board adjourned its closed session and went into open session at 1:45 p.m.

## **OPEN SESSION**

### **10 Minutes**

May 12, 2017 [regular meeting]

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the minutes of the regular meeting of the Board of Trustees held on May 12, 2017 in San Francisco, California are approved as written.

All members listed on the slip voted yes, except Renee LaBran, Richard Ramirez, Stacie Spector, Alan Steinbrecher and Todd Stevens who had left the meeting.

## **30 President's Report**

### **30-1 - Proposed Multi-Year Board Meeting Schedule for 2017-2018**

#### **Revised proposed 2017-18 meeting schedule for affirmation by the Board**

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees affirms that all regularly scheduled meetings of the Board be held as listed on the attached meeting schedule.

All members listed on the slip voted yes, except Renee LaBran, Richard Ramirez, Stacie Spector, Alan Steinbrecher and Todd Stevens who had left the meeting.

## **40 Staff Reports**

### **41/42 Executive Director/Secretary Report (Oral)**

Ms. Parker advised the Board that the State Bar had recently been targeted by an external spear-phishing scam. There is no indication that any State Bar data was compromised or systems breached. This scam appeared to be part of an organized criminal enterprise that has reportedly resulted in the loss of millions of dollars to major corporations. The State Bar lost \$18,500 and was able to block additional phishing attempts.

Ms. Parker stated that because there was an active law enforcement investigation management was not at liberty to disclose additional details. However, she advised that the Executive Committee, at its July 6 meeting was briefed, as she was doing so for the board.

## **50 Consent**

All items on the consent agenda were presented to the Board, and no objection being raised thereto, the following items on the consent agenda were deemed unanimously adopted, except 54-111 which was tabled and 54-141 which was approved after discussion.

### **50-1 - Financial Resolution**

The Board of Trustees adopts a financial resolution identifying the State Bar's various bank accounts and delegating authority to certain positions in the State Bar to initiate cash transfers, sign checks, and buy and sell securities. This resolution must be adopted by the Board annually. A recent review of Finance policies and procedures has revealed that the policy governing wire transfers should be modified to strengthen internal controls. The existing Financial Resolution, adopted by the Board in September 2016, should therefore be amended.

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

FURTHER RESOLVED, that each bank in which the State Bar maintains an account or safe deposit box shall be furnished a copy of this resolution and be notified that the Executive Director, Chief Operating Officer, Chief Financial Officer, Director of General

Services and Director of Human Resources, who are now so authorized to purchase and sell securities, sign withdrawal orders, transfer orders and checks, to order the deposit or withdrawal of monies in the Local Agency Investment Fund, and authorize transfer of funds from one State Bar account to another State Bar account, are as follows:

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

For checks drawn on a commercial account:

- (a) Any single check of \$75,000.00 or more requires the manual signature of any two of the authorized persons.
- (b) Any single check less than \$75,000.00 may be processed through a check signing machine utilizing a signature plate engraved with the name of the Executive Director.
- (c) Transfer of funds from one State Bar account to another State Bar account may be approved by any two of the authorized persons.
- (d) Wire transfers to non-State Bar accounts must be processed on-line and require approval of any two of the authorized persons. Manual wire transfers, requested in person at a bank branch, are prohibited.

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

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

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

Steven Mazer, Director of General Services  
Gilda Munoz, Director of Human Resources  
Greg Shin, Director of Operations and Management, Admissions

- (a) Any single check less than \$3,000.00 requires the signature of one of the following:
- (b) Any single check of \$3,000.00 or more requires the signature of any two of the above listed persons.

**54-111 Governance in the Public Interest Task Force Recommendations and Related Changes to the Board Book – *ITEM TABLED***

**54-131- Recommendation to the Supreme Court of California for Suspension of Licensees Delinquent in Payment of 2016 and 2017 State Bar Membership Fees, Penalties or Costs**

Pursuant to the provision of Business and Professions Code section 6143, the Board of Trustees, on an annual basis, recommends to the Supreme Court of California the suspension of licensees who have not fully paid State Bar membership fees, penalties or costs. This suspension recommendation is for years 2016 and 2017. Licensees who have not paid by August 31, 2017 will be suspended by the Supreme Court of California effective September 1, 2017.

RESOLVED, that the Board of Trustees forward to the Supreme Court of California the names of those licensees to be suspended from the practice of law in California for failing to pay State Bar membership fees, penalties or costs on or before August 31, 2017, and hereby ascertains and determines:

- (a) that the Secretary or his designee has performed the ministerial function of determining that each person who is to be recommended to the Supreme Court of California for suspension for nonpayment of fees is a member of The State Bar of California;
- (b) that the Secretary or his designee has determined that each such person has failed to fully pay fees, penalties and/or costs as established pursuant to the November 17, 2016 Supreme Court Order and sections 6086.10, 6140, 6140.5(c), 6140.55, 6140.6, 6140.7, 6140.9 and 6141 of the Business and Professions Code;
- (c) that the Secretary or his designee has sent to each such person, at his or her address of record with the State Bar of California, two months' written notice of his or her delinquency which included notice of section 6143 of the Business and Professions Code;
- (d) and recommends to the Supreme Court of California that each such person be suspended from membership in the State Bar, and from the practice of law in the State of California, effective September 1, 2017, until such time as he or she may be reinstated, upon the payment of the delinquent fees, penalties or costs and of such additional fees, penalties or costs as may have accrued at the time of such payment; and it is

FURTHER RESOLVED, that for the purpose of withdrawing the foregoing recommendation for suspension in particular cases, the Secretary or his designee is authorized and directed to notify the Clerk of the Supreme Court of California of the name of any member of the State Bar who by proper remittance (e.g., credit card accepted by the State Bar, cash, cashier's check, money order, bank certified check, or wire transfer), and prior to the effective date of the Supreme Court of

California order of suspension based hereon, pays to the State Bar fees, penalties or costs in the amount in which he or she is delinquent; and to notify the Clerk of the Supreme Court of California of the consequent withdrawal of the Board of Trustees' recommendation for suspension; and it is

FURTHER RESOLVED, that for the purpose of modifying the recommendation to the Supreme Court of California for suspension for nonpayment of fees, penalties, or costs, the Secretary or his designee is authorized and directed to change the data as to status or the amounts of delinquency of any member and to notify the Clerk of the Supreme Court of California accordingly of the consequent modification of the Board of Trustees' recommendation for suspension.

#### **54-132 - MCLE – Recommendation re Attorneys in Noncompliance**

Pursuant to California Rules of Court, Rule 9.31, State Bar staff request permission to administratively enroll all attorneys in MCLE Compliance Group 3 (last names N-Z) who have not complied with the MCLE requirement by August 31, 2017, as involuntary inactive and place them on "Not Eligible to Practice" status, effective September 1, 2017. In addition, we would like to act on any other Group 1, Group 2, and Group 3 attorneys who were granted modifications (extensions of time) for a prior period and who have not complied by their extended deadlines.

RESOLVED, pursuant to California Rule of Court 9.31 and the Rules of the State Bar, that the Board hereby authorizes that those attorneys in MCLE Compliance Groups 1, 2 and 3 who do not bring themselves into compliance with their MCLE requirements by August 31, 2017, be enrolled as inactive and placed on "Not Eligible to Practice" status, effective September 1, 2017; and it is

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

#### **54-141 Member Request for Adjustments to Fees and Penalties – *ITEM PULLED FROM CONSENT BUT ACTED UPON WITH A MODIFIED LIST OF WAIVERS***

Members may request that adjustments be made to their membership fees and penalties. Title Two, Rule 2.16 (H) of the Rules of the State Bar states that the Board reserves the right for good cause grant requests for waivers that were denied by staff and to consider all other requests for waivers. This item consolidates several member requests for which the Board's Membership Liaisons have determined that good cause exists to recommend fee adjustments.

Upon motion made, seconded and unanimously adopted, it was

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

All members listed on the slip voted yes, except Danette Meyers, Richard Ramirez and Stacie Spector, who had left the meeting.

#### **54-161 - Commission on Judicial Nominees Evaluation, 2014-2016 Activities and Statistical Report**

Jody Nuñez, 2016-2017 Chair of the Commission on Judicial Nominees Evaluation (JNE), has prepared the attached statistical data report concerning the work of JNE from 2014-2016.

RESOLVED, that the Board of Trustees receives the Commission on Judicial Nominees Evaluation 2016 Activities and Statistical Report and orders it filed.

#### **54-162 - Council on Access & Fairness Long Range Plan**

Since its inception in 2006, the Council on Access & Fairness (COAF) has engaged in an annual planning process, resulting in the adoption of work plans to guide COAF's ongoing efforts. COAF continued to present the work plans to the then Stakeholder Relations Committee each year on an informational basis.

RESOLVED, that the Board of Trustees approves the Council on Access & Fairness 2017-2018 Long Range Plan.

### **100 Reports of Board Committees**

#### **140 Planning and Budget**

#### **142 - 2017 Mid-Year Forecast, Variance Report & Proposed Budget Amendment (Wong)**

In January the Board of Trustees adopted the State Bar's annual budget covering the 2017 fiscal year. Pursuant to the State Bar's fiscal policy, the Office of Finance is responsible for monitoring budget spending throughout the fiscal year and providing the Board with budget status updates and proposals for amendments when necessary. In this agenda item, staff presents: 1) the budget-to-actual variance report by line item reflecting variances greater than \$100,000; 2) the 2017 mid-year financial forecast/projection; and 3) the 2017 proposed budget amendment.

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

RESOLVED, that the Board of Trustees approve the Proposed Budget Amendment summarized in Attachment C.

All members listed on the slip voted yes, except Danette Meyers, Richard Ramirez, and Stacie Spector, who had left the meeting.

### **143 - Recommendation to Adjust and Align Minimum Continuing Legal Education (MCLE) and Legal Specialization Provider Certification Fees (Conover)**

Minimum Continuing Legal Education (MCLE) and Legal Specialization Provider Certification Fees have not been adjusted in many years. Adjustment and alignment of both types of fees is recommended at this time. The recommended 20 percent fee increase will eliminate the current structural deficit in these programs; alignment of the fee administration process and moving the renewal deadline will increase efficiency for both the State Bar and providers.

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

RESOLVED, that the Planning and Budget Committee recommends that the Board of Trustees approve raising the MCLE and Legal Specialization Single Activity Providers fee to \$90; and it is

FURTHER RESOLVED, that the Board of Trustees approve raising the MCLE Multiple Activity Provider application fee to \$360 and increase the initial certification period from two years to a maximum of three years; and it is

FURTHER RESOLVED, that the Board of Trustees require that new Legal Specialization Multiple Activity Providers must also certify as MCLE Providers at \$360 and optionally add the additional certification for Legal Specialization for an additional \$90; and it is FURTHER RESOLVED, that the Board of Trustees approve raising the three-year MCLE Multiple Activity Provider renewal fees to \$360; and it is

FURTHER RESOLVED, that the Board of Trustees approve raising the renewal fee to \$450 for the Providers who are seeking renewal for both MCLE and Legal Specialization programs.

All members listed on the slip voted yes, except Michael Colantuono, Jason Lee, Joanna Mendoza, Danette Meyers, Richard Ramirez, Sean SeLegue and Stacie Spector, who had left the meeting.

### **160 Stakeholders and Access to Justice Committee and Appointments**

### **163- Legal Services Trust Fund – Set Amount for Distribution, Jan to Dec 2018 IOLTA Grants, including Voluntary and State Bar Contributions (Choy)**

Each year, the Board of Trustees sets the grant amount available for distribution from Interest on Lawyers' Trust Accounts ("IOLTA") to nonprofit legal aid organizations in California. While called "IOLTA grants," over the years, the Justice Gap Fund and other contributions through the State Bar Fee bill have been added to the amount available for distribution. This request is for the Board to approve the distribution of grant funds for the 2018 calendar year. After careful review of revenue projections and consideration to the needs of the legal aid programs, the Legal Services Trust Fund Program recommends a calendar year 2018 grant distribution of \$14,009,353, a 26% increase over the 2017 grant distribution of \$11,107,919. This is the first year since 2008 that the Commission's recommendation applies the "cash on hand" reserve policy that the Board of Governors adopted in 2006.

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

RESOLVED, that the Board adopts the recommendation of the Legal Services Trust Fund Commission to approve the distribution of \$14,009,353 in IOLTA grants for the 2018 year, which is a 26% increase over current level funding of \$11,107,919, calculated as follows:

- (1) \$11,107,919 grant distribution amount for 2017
- (2) \$555,396 increase representing 5% of 2017 grants to program
- (3) \$2,346,038 increase representing one-half of the amount over 15% of prior year net revenue

leaving a projected fund balance of \$7,456,830 at December 31, 2018, which includes close to 30% for cash on hand of \$4 million, plus an additional reserve of \$3,456,830 (10% of 2107 grant amount plus one-half of the amount over 15% of prior year net revenue) after applying the Board's cash on hand policy to build the reserve fund.

All members listed on the slip voted yes, except Jason Lee and Sean SeLegue who abstained and Joanna Mendoza, Danette Meyers, Richard Ramirez and Stacie Spector, who had left the meeting.

## **180 Audit Committee**

### **181 - State Auditor's Report - Discussion of Audit Committee's Role in Monitoring the Implementation of Auditor's Recommendations Report**

Report Only



## **182 - Proposal from Moss Adams – Policies and Procedures Review & Internal Control Review**

According to the State Bar's Board Book (Tab 4.1, Section 10), "beginning in 2015 and every five years thereafter, a review of the State Bar's budget and fiscal control policies and procedures shall be conducted by an independent consultant under the oversight of the Board Audit Committee". The last internal control review was conducted by Sjoberg Evashenk consulting Inc. in 2010. In 2015, staff initiated an internal control review, but it was postponed due to the special State audit and a series of financial reviews. Staff recommends that the internal control review be conducted in 2017. The work scope of this internal control review will also include a review of the State Bar's financial policies as well as selected cyber security policies. The total estimated service fee is \$150,000. A request for related funding has been included in the budget amendment agenda item going before the Board as JUL 142. The cost will be allocated out to individual programs based on direct operating expenses.

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

RESOLVED, that the Board of Trustees approve the attached internal control review proposal from Moss Adams and instruct staff to begin the process in 2017.

All members listed on the slip voted yes, except Terry Flanigan, Danette Meyers, Richard Ramirez and Stacie Spector, who had left the meeting.

## **700 Miscellaneous**

### **703 Implementation of Governance in the Public Interest Task Force Recommendations: Adoption of New State Bar Mission Statement**

On May 15, 2017, the 2017 Governance in the Public Interest Task Force (Task Force) filed its third triennial report pursuant to statute. The 2017 Task Force Report contains recommendations for changes in the governance structure of the State Bar. This agenda item places before the Board of Trustees for approval a number of 2017 Task Force recommendations, including a new State Bar mission statement.

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

RESOLVED, that the Board of Trustees updates the State Bar Mission Statement pursuant to the recommendations of the 2017 Governance in the Public Interest Task Force as follows:

The State Bar of California's mission is to protect the public and includes the primary functions of licensing, regulation and discipline of attorneys; the advancement of the ethical and competent practice of law; and the promotion of efforts for greater access to, and inclusion in, the legal system.

All members listed on the slip voted yes, except Terry Flanigan, Danette Meyers, Richard Ramirez and Stacie Spector, who had left the meeting.

### **705 Antitrust Policy (Chang)**

On September 8, 2016 the Supreme Court of California directed the State Bar to formulate a policy, to be presented to the Supreme Court for approval, that the State Bar must follow in identifying, analyzing, and bringing to the Court any proposed Board action that implicates antitrust concerns. The State Bar Office of General Counsel ("OGC") has been monitoring closely the State Bar's antitrust compliance in light of a recent decision by the U.S. Supreme Court clarifying the application of the antitrust laws to licensing bodies comprised of market participants. The proposed Antitrust Policy explains the application of antitrust law to the State Bar and establishes a procedure for review by OGC and the California Supreme Court of actions that potentially implicate antitrust concerns.

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

RESOLVED, that the Board of Trustees shall submit the attached proposed Antitrust Policy to the California Supreme Court for its review and approval;

FURTHER RESOLVED, that upon approval by the Court, OGC is directed to establish a procedure for review of antitrust concerns, consistent with the policy as approved by the Supreme Court.

All members listed on the slip voted yes, except Danette Meyers, Richard Ramirez and Stacie Spector, who had left the meeting.

The Board went into closed session at 2:50 p.m.

The Board adjourned its meeting at 2:55 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, 845 S. Figueroa Street, Board Room, 2nd Floor, Los Angeles, CA 90017, on Wednesday, September 6, 2017, at a time to be determined.

## Proposed 2017 Budget Adjustments - By Item

Item	Cost Center	Object Code	Account Description	2017 Adopted Budget	Proposed Adjustment	2017 Amended Budget	Explanation
<b>1) Budget Amendment Due to Variance:</b>							
<b>1</b>	32	30120	Voluntary Dues/Donations	(600,000)	(300,000)	(900,000)	Justice Gap and LSTF donations were conservatively budgeted due to the uncertainties of online billing. Year to Date donations have exceeded both annual budgets. Staff recommends increasing the Justice Gap budget by \$300K and Legal Services by \$175K.
	28	30120	Voluntary Dues/Donations	(6,325,000)	(175,000)	(6,500,000)	
<b>2</b>	37	34510	Investment Income	-	(200,000)	(200,000)	Bank Settlement Investment Income not budgeted for 2017. May YTD Actual has surpassed \$100K. Staff recommends increasing the budget by \$200K.
<b>3</b>	20009	31210	Applicant Fees-New July	(5,000,000)	(300,000)	(5,300,000)	There was a decline of 280 February New Attorney Applicants (1,364 vs 1,644) compared to the prior year. At a rate of \$983 per applicant, this resulted in \$300K less revenue than was budgeted, assuming the same number of applicants as the prior year.
	20009	31120	Attorney Applic.-New February	(1,560,000)	300,000	(1,260,000)	
	20009	31220	Attorney Applicant Fees-New July	(1,450,000)	(500,000)	(1,950,000)	For July, there are 499 more general applicants compared to the prior year (7,981 vs. 7,482 at a rate of \$677), 502 more attorney applicants (2,051 vs. 1,549 at a rate of \$983). Combined, there are 1,001 more applicants. The laptop fee, at a rate of \$153, has exceeded the annual budget by approximately \$150K.  Staff recommends increasing New Applicant Fees (July) by \$300K, New Attorney Applicant Fees (July) by \$500K, and Laptop Fees (July) by \$100K. Staff further recommends reducing New Attorney Applicant Fees (February) by \$300K to align the exam income with the 2017 trend.
	20009	31240	Laptop Fee-July	(1,260,000)	(100,000)	(1,360,000)	

Item	Cost Center	Object Code	Account Description	2017 Adopted Budget	Proposed Adjustment	2017 Amended Budget	Explanation
<b>2) Budget Amendment to Correct Technical Inaccuracies:</b>							
<b>4</b>	10801	35710	MCLE Self Study Test	-	(120,000)	(120,000)	MCLE Study Revenue was not included in the adopted budget due to a technical error. Staff recommends increasing the budget by \$120K.
<b>5</b>	18004	38331.01	BOA-Pass Thru to Foundation	-	156,000	156,000	Revenue offset to capture estimated Royalty Income for BOA, UPS, and Office Max was not included in the budget due to a technical error. Staff recommends increasing the budget for this revenue reduction by \$156K.
<b>6</b>	10001	40159	Miscellaneous Benefits	-	84,000	84,000	Supplemental benefits for Pay in lieu of benefits, Housing, and 457 reimbursement. Staff recommends increasing the budget by \$84K.
<b>7</b>	20009	35720	MCLE Provider Fees	(9,000)	9,000	-	MCLE revenue transferred from Admissions Fund to Member Services, but was redundantly captured in Admissions. Staff recommends reducing the budget by \$254K to remove this duplicate amount.
	20009	35730	MCLE Provider Renewal Fees	(140,000)	140,000	-	
	20009	35740	MCLE Activity Fees	(105,000)	105,000	-	
<b>8</b>	23001	44100	Reporting and Transcribing	100,000	(100,000)	-	Removal of redundant budget for employment investigations.
<b>9</b>	74001	47310	Sections Assessment	83,100	(83,100)	-	Correction of Sections Assessment amounts.
	80001	47310	Sections Assessment	61,400	(61,400)	-	
<b>10</b>	23310	42180	Parking - Lease Contracts	-	140,000	140,000	Contractual obligation for LA Parking.
<b>11</b>	10408	40110	Salaries - Regular	767,800	79,100	846,900	Transfer of personnel costs between programs. Impact is neutral.
	10408	40140	Payroll Tax Allocation	58,700	6,051	64,751	
	10408	40150	Fringe Allocation	214,400	22,093	236,493	
	10310	40110	Salaries - Regular	24,124,900	(79,100)	24,045,800	
	10310	40140	Payroll Tax Allocation	1,852,800	(6,051)	1,846,749	
	10310	40150	Fringe Allocation	6,738,100	(22,093)	6,716,007	
	23001	40115	Salaries - Special	-	95,000	95,000	
	23001	40140	Payroll Tax Allocation	-	7,268	7,268	
	10310	40115	Salaries - Special	95,000	(95,000)	-	
	10310	40140	Payroll Tax Allocation	-	(7,268)	(7,268)	

Item	Cost Center	Object Code	Account Description	2017 Adopted Budget	Proposed Adjustment	2017 Amended Budget	Explanation
3) Budget Amendment to Capture Unanticipated Incomes and Expenses:							
12	20001	43510	Professional Services	68,500	100,000	168,500	Additional consultants will be engaged to conduct studies regarding the bar exam. Staff recommends increasing the budget by \$100K.
13	12447	36010	Grant Revenue	-	(10,000)	(10,000)	Bar Foundation Grant in the amount of \$10K for Effective Lawyering Curriculum.
	12447	40550	Travel - Volunteers	-	5,000	5,000	
	12447	43510	Professional Services	-	5,000	5,000	
14	16001	40110	Salaries - Regular	113,800	24,495	138,295	Transfer of personnel costs between programs. Impact is neutral.
	16001	40140	Payroll Tax Allocation	8,700	1,874	10,574	
	16001	40150	Fringe Allocation	31,800	6,841	38,641	
	23001	40110	Salaries - Regular	2,951,600	(24,495)	2,927,105	
	23001	40140	Payroll Tax Allocation	225,800	(1,874)	223,926	
	23001	40150	Fringe Allocation	824,400	(6,841)	817,559	
	23350	40110	Salaries - Regular	886,800	21,820	908,620	
	23350	40140	Payroll Tax Allocation	67,800	1,669	69,469	
	23350	40150	Fringe Allocation	247,700	6,094	253,794	
	18002	40110	Salaries - Regular	103,500	(21,820)	81,680	
	18002	40140	Payroll Tax Allocation	7,900	(1,669)	6,231	
	18002	40150	Fringe Allocation	28,900	(6,094)	22,806	
4) Initiatives funded from Projected General Fund Savings:							
15	10310	40110	Salaries - Regular	NA	(550,000)	NA	OCTC Salary and Benefit Savings to fund new initiatives.
	26	42190	Repairs and Maintenance - Building	NA	550,000	NA	Office Reconfiguration to Support OCTC Expansion. 100% financed by OCTC salary saving
16	26	42010	Building Improvements	1,700,000	430,000	2,130,000	Increase in Howard building improvement costs \$430K. Approximately 62% or \$267K is allocated to the GF. The remaining cost of \$163K will be allocated to various (non-General Fund) programs.
	26	47210	Indirect Cost Allocation	NA	(430,000)	NA	
17	19030	41540	Equipment - Hardware Purchases	-	700,000	NA	Oracle ERP Upgrade. Projected expenses for 2017 is \$700K. 74% or \$518K is allocated to the GF. Remaining cost for \$182K will be allocated to various non-General Fund programs.
	19	47210	Indirect Cost Allocation - IT Fund	NA	(700,000)	NA	
18	23101	43510	Professional Services	550,000	150,000	700,000	Provision for profession service fees related to policy and procedures review and internal control audit in 2017. approximately 58% or \$87K will be allocated to the GF and remaining costs for \$63K will be allocated to various non-GF programs.
	23	47210	Indirect Cost Allocation	NA	(150,000)	NA	

## 2017 Budget Amendment Summary by Fund

JUL 142 \_ Attachment C2

Fund Description	12/31/2016 Reserve Balance	2017 Adopted Budget					2017 Budget Amendment				
		Revenue	Expense	Indirect Cost	Fund Transfers	12/31/2017 Reserve Balance	Increase/ (Decrease) in Revenue	Increase/ (Decrease) in Expenses	Estimated Change in Indirect Cost	Amount Funded by Savings	12/31/2017 Reserve Balance After Amendment
						(A)	(B)	(C)	(D)	(E)	(A)+(B)-(C)-(D)-(E)
<b>Consolidated General Fund</b>											
General Fund (10)	11,860,000	68,714,000	(55,758,000)	(18,171,000)	(1,600,000)	5,045,000	120,000	532,000	952,000	(1,484,000)	5,165,000 (1)
Building Fund (26)	4,291,000	1,365,000	(1,700,000)	986,000	-	4,942,000		430,000	(430,000)	-	4,942,000
Legal Educ. And Dev. Fund (18)	7,934,000	2,154,000	(242,000)	-	-	9,846,000	(156,000)	(29,600)	5,000	-	9,714,600
LA Facility Fund (35)	(4,948,000)	447,000	(2,300,000)	2,300,000	-	(4,501,000)			-	-	(4,501,000)
Public Protection Fund (25)	6,510,000	-	-	-	-	6,510,000			-	-	6,510,000
Support & Adm (23)	-	-	(24,333,000)	24,733,000	(400,000)	-		293,000	(293,000)	-	-
Technology Fund (19)	3,851,000	-	(4,334,000)	(784,000)	400,000	(867,000)		700,000	(667,000)	-	(900,000) (2)
Fixed Asset Fund (15)	-	-	-	-	-	-			-	-	-
Benefit Reserve Fund (34) (Designated)	-	-	-	-	-	-	-	-	-	-	-
<b>Total Consolidated General Fund:</b>	<b>29,498,000</b>	<b>72,680,000</b>	<b>(88,667,000)</b>	<b>9,064,000</b>	<b>(1,600,000)</b>	<b>20,975,000</b>	<b>(36,000)</b>	<b>1,925,400</b>	<b>(433,000)</b>	<b>(1,484,000)</b>	<b>20,930,600</b>
<b>Special Revenue Fund Group:</b>											
Admissions Fund (20)	4,158,000	20,956,000	(16,449,000)	(4,694,000)	1,000,000	4,971,000	346,000	100,000	225,000	-	4,992,000
Annual Mtg Fund (14)	(81,000)	-	-	-	-	(81,000)			-	-	(81,000) (3)
Grant Fund (12)	452,000	6,000	(6,000)	-	-	452,000	10,000	10,000	-	-	452,000
Sections (70-89)	7,898,000	9,006,000	(7,358,000)	(1,655,000)	-	7,891,000		(144,500)	86,000	-	7,949,500
<b>Total Special Revenue Fund Group:</b>	<b>12,427,000</b>	<b>29,968,000</b>	<b>(23,813,000)</b>	<b>(6,349,000)</b>	<b>1,000,000</b>	<b>13,233,000</b>	<b>356,000</b>	<b>(34,500)</b>	<b>311,000</b>	<b>-</b>	<b>13,312,500</b>
<b>Restricted Fund Group:</b>											
Legislative Activities Fund (16)	552,000	102,000	(330,000)	(66,000)	-	258,000	-	33,200	3,000	-	221,800
Elimination of Bias Fund (17)	470,000	-	(433,000)	(100,000)	-	(63,000)	-	-	5,000	-	(68,000) (4)
Lawyer Assistance Program (21)	2,989,000	2,085,000	(1,201,000)	(449,000)	-	3,424,000	-	-	16,000	-	3,408,000
Legal Specialization Fund (24)	6,109,000	430,000	(4,609,000)	(764,000)	(1,000,000)	166,000	-	-	43,000	-	123,000
Client Security Fund (27)	1,439,000	8,030,000	(6,734,000)	(564,000)	1,600,000	3,771,000	-	-	16,000	-	3,755,000
Info. Tech Special Assessment Fund (31)	1,217,000	-	-	-	-	1,217,000	-	-	-	-	1,217,000 (2)
Legal Service Trust Fund (28)	5,608,000	12,450,000	(14,471,000)	(718,000)	2,133,000	5,002,000	175,000	-	37,000	-	5,140,000
Equal Access Fund (29)	1,753,000	19,653,000	(19,225,000)	(15,000)	-	2,166,000	-	-	-	-	2,166,000
Justice Gap Fund (32)	1,659,000	602,000	-	(9,000)	(2,133,000)	119,000	300,000	-	-	-	419,000
Bank Settlement Fund (37)	44,103,000	-	(5,503,000)	(30,000)	-	38,570,000	200,000	-	2,000	-	38,768,000
<b>Total Restricted Fund Group:</b>	<b>65,899,000</b>	<b>43,352,000</b>	<b>(52,506,000)</b>	<b>(2,715,000)</b>	<b>600,000</b>	<b>54,630,000</b>	<b>675,000</b>	<b>33,200</b>	<b>122,000</b>	<b>-</b>	<b>55,149,800</b>
<b>Grand Total:</b>	<b>107,824,000</b>	<b>146,000,000</b>	<b>(164,986,000)</b>	<b>-</b>	<b>-</b>	<b>88,838,000</b>	<b>995,000</b>	<b>1,924,100</b>	<b>-</b>	<b>(1,484,000)</b>	<b>89,392,900</b>

Note: (1) Staff proposes to fund the GF budget increase for \$1,484,000 with projected GF savings.

(2) The \$900K projected negative balance in the Technology Fund is due to the \$4.1 million CMS project cost budget in 2017.

In 2015, Board approved to spend the \$1.2M fund balance in the IT Special Assessment Fund to finance the CMS project.

When the CMS project cost is finalized by end of 2017, staff will prepare fund transfer from the IT Special Assessment Fund to correct the negative balance in the Technology Fund.

(3) \$81K negative fund balance in the Annual Meeting Fund is from prior year deficit. Staff will propose resolution to correct this fund balance in the next board meeting.

(4) The 2017 adopted budget projected \$0 revenue in the EOB Fund because of the elimination of \$5 optional fee in the 2017 Fee Bill.

Fees collected in EOB Fund as of May 2017 is approximately \$90K. Staff will propose resolution to correct the deficit in the next Board meeting.

# Proposed 2017 Budget Adjustments - Impact to the Unconsolidated General Fund

JUL - 142 Attachment C3

<u>Description</u>	<u>Cost Center</u>	<u>Changes - GF</u>	<u>Explanation</u>
		\$	
<b>A. Revenue:</b>			
1. MCLE Self Study	10801	120,000	Budget Adj #4 - Technical adjustment
<b>Total Increase/(Decrease) to Revenue</b>		<u><u>120,000</u></u>	

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<u>Description</u>	<u>Cost Center</u>	<u>Changes - GF</u>	<u>Explanation</u>
		\$	
<b>B. Operating Expenses:</b>			
1. Separation pay cost center correction	10310	(102,268)	Budget Adj #11 - Technical adjustment - expense was incorrectly recorded in OCTC in the adopted budget
2. Cost Center correction for Case Administrator's salary	10310	(107,244)	Budget Adj # 11 -Payroll budget correction
	10408	107,244	
3. Executive Director Office: Executive Benefits	10001	84,000	Budget Adj #6 -Technical adjustment
OCTC - Office Reconfiguration	10310	550,000	Budget Adj #15- OCTC Office configuration. 100% financed by OCTC saving
<b>Total Increase/(Decrease) to Operating Expenses</b>		<u><u>531,732</u></u>	

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<b>C. Increase to Indirect Cost Allocation:</b>			
		<u>GF Allocation %</u>	
1. Separation pay cost center correction	23001	102,268	58% Budget Adj #11 -Technical adjustment
2. Employment Investigations	23001	(100,000)	58% Budget Adj # 8 -Removal of redundandant budget amount
3. Parking Lease Contracts	23310	140,000	58% Budget Adj #10 -Technical adjustment: unbudgeted charges
4. Finance Internal Control Audit	23101	150,000	58% Budget Adj # 18 - internal control audit and policies review.
5. Howard Street Building Improvement	26	430,000	62% Budget Adj # 16-Howard Bldg improvement
10. Oracle ERP System Upgrade	19030	700,000	74% Budget Adj # 17 - Oracle ERP system upgrade
<b>Estimated Indirect Costs Allocated to GF:</b>		<u>\$ 952,000</u>	
<b>Net Impact to the General Fund</b>		<u><u>\$ 1,363,732</u></u>	

**Rule 5-110 Special Responsibilities of a Prosecutor  
(Commission's Proposed Rule Adopted on July 5, 2017)**

The prosecutor in a criminal case shall:

- (A) Not institute or continue to prosecute a charge that the prosecutor knows is not supported by probable cause;
- (B) Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- (C) Not seek to obtain from an unrepresented accused a waiver of important pretrial rights unless the tribunal has approved the appearance of the accused in propria persona;
- (D) Make timely disclosure to the defense of all evidence or information known to the prosecutor that the prosecutor knows\* or reasonably should know\* tends to negate the guilt of the accused, mitigate the offense, or mitigate the sentence, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and
- (E) Exercise reasonable care to prevent persons under the supervision or direction of the prosecutor, including investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under rule 5-120.
- (F) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:
  - (1) Promptly disclose that evidence to an appropriate court or authority, and
  - (2) If the conviction was obtained in the prosecutor's jurisdiction,
    - (a) Promptly disclose that evidence to the defendant unless a court authorizes delay, and
    - (b) Undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.
- (G) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.



## Discussion

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice, that guilt is decided upon the basis of sufficient evidence, and that special precautions are taken to prevent and to rectify the conviction of innocent persons. Rule 5-110 is intended to achieve those results. All lawyers in government service remain bound by rules 3-200 and 5-220.

[2] Paragraph (C) does not forbid the lawful questioning of an uncharged suspect who has knowingly waived the right to counsel and the right to remain silent. Paragraph (C) also does not forbid prosecutors from seeking from an unrepresented accused a reasonable waiver of time for initial appearance or preliminary hearing as a means of facilitating the accused's voluntary cooperation in an ongoing law enforcement investigation.

[3] The disclosure obligations in paragraph (D) are not limited to evidence or information that is material as defined by *Brady v. Maryland* (1963) 373 U.S. 83 [83 S. Ct. 1194] and its progeny. For example, these obligations include, at a minimum, the duty to disclose impeachment evidence or information that a prosecutor knows\* or reasonably should know\* casts significant doubt on the accuracy or admissibility of witness testimony on which the prosecution intends to rely. Paragraph (D) does not require disclosure of information protected from disclosure by federal or California laws and rules, as interpreted by case law or court orders. Nothing in this rule is intended to be applied in a manner inconsistent with statutory and constitutional provisions governing discovery in California courts. A disclosure's timeliness will vary with the circumstances, and paragraph (D) is not intended to impose timing requirements different from those established by statutes, procedural rules, court orders, and case law interpreting those authorities and the California and federal constitutions.

[4] The exception in paragraph (D) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[5] Paragraph (E) supplements rule 5-120, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. Paragraph (E) is not intended to restrict the statements which a prosecutor may make which comply with rule 5-120(B) or 5-120(C).

[6] Prosecutors have a duty to supervise the work of subordinate lawyers and nonlawyer employees or agents. (See rule 3-110, Discussion.) Ordinarily, the reasonable care standard of paragraph (E) will be satisfied if the prosecutor issues the appropriate cautions to law enforcement personnel and other relevant individuals.

[7] When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a person outside the prosecutor's jurisdiction was convicted

of a crime that the person did not commit, paragraph (F) requires prompt disclosure to the court or other appropriate authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. If the conviction was obtained in the prosecutor's jurisdiction, paragraph (F) requires the prosecutor to examine the evidence and undertake further investigation to determine whether the defendant is in fact innocent or make reasonable efforts to cause another appropriate authority to undertake the necessary investigation, and to promptly disclose the evidence to the court and, absent court authorized delay, to the defendant. Disclosure to a represented defendant must be made through the defendant's counsel, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to a court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate. (See rule 2-100.)

[8] Under paragraph (G), once the prosecutor knows of clear and convincing evidence that the defendant was convicted of an offense that the defendant did not commit, the prosecutor must seek to remedy the conviction. Depending upon the circumstances, steps to remedy the conviction could include disclosure of the evidence to the defendant, requesting that the court appoint counsel for an unrepresented indigent defendant and, where appropriate, notifying the court that the prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted.

[9] A prosecutor's independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of sections (F) and (G), though subsequently determined to have been erroneous, does not constitute a violation of rule 5-110.

**Rule 3.4 Fairness to Opposing Party and Counsel**  
**(Proposed Rule as Adopted by the Commission on July 5, 2017 – Alternative 1)**

A lawyer shall not:

- (a) unlawfully obstruct another party's access to evidence, including a witness, or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person\* to do any such act;
- (b) suppress any evidence that the lawyer or the lawyer's client has a legal obligation to reveal or to produce;
- (c) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (d) directly or indirectly pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case. Except where prohibited by law, a lawyer may advance, guarantee, or acquiesce in the payment of:
  - (1) expenses reasonably\* incurred by a witness in attending or testifying;
  - (2) reasonable\* compensation to a witness for loss of time in attending or testifying; or
  - (3) a reasonable\* fee for the professional services of an expert witness;
- (e) advise or directly or indirectly cause a person\* to secrete himself or herself or to leave the jurisdiction of a tribunal\* for the purpose of making that person\* unavailable as a witness therein;
- (f) subpoena a lawyer in any civil or criminal proceeding, including grand jury proceedings, to present evidence about a current or former client unless the lawyer seeking the subpoena reasonably believes: <sup>\*</sup>
  - (1) the information sought is not protected from disclosure by any applicable privilege or work product protection;
  - (2) the evidence sought is [essential / reasonably necessary]<sup>⊕</sup> to the successful completion of an ongoing criminal investigation or prosecution, or is [essential/reasonably necessary]<sup>⊕</sup> to support the claim or defense asserted in an ongoing civil investigation or proceeding; and

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<sup>⊕</sup> This language is bracketed to indicate that comment is sought on which term ("essential" or "reasonably necessary") the public believes is appropriate for this rule.

- (3) there is no other [feasible / reasonable]<sup>Ø</sup> alternative to obtain the information;
- (g) knowingly\* disobey an obligation under the rules of a tribunal\* except for an open refusal based on an assertion that no valid obligation exists; or
- (h) in trial, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the guilt or innocence of an accused.

### Comment

[1] Paragraph (a) applies to evidentiary material generally, including computerized information. It is a criminal offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. See, e.g., Penal Code § 135; 18 United States Code §§ 1501-1520. Falsifying evidence is also generally a criminal offense. See, e.g., Penal Code § 132; 18 United States Code § 1519. Applicable law may permit a lawyer to take temporary possession of physical evidence of client crimes for the purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence. Applicable law may require a lawyer to turn evidence over to the police or other prosecuting authorities, depending on the circumstances. See *People v. Lee* (1970) 3 Cal.App.3d 514, 526 [83 Cal.Rptr. 715]; *People v. Meredith* (1981) 29 Cal.3d 682 [175 Cal.Rptr. 612].

[2] Paragraph (f) is intended to limit the issuance of lawyer subpoenas in criminal or other proceedings to those situations in which there is a genuine need to intrude into the client-lawyer relationship. (See generally, *Carehouse Convalescent Hosp. v. Superior Court* (2006) 143 Cal.App.4th 1558 [50 Cal.Rptr.3d 129]; *Spectra Physics, Inc. v. Superior Court* (1988) 198 Cal.App.3d 1487 [244 Cal.Rptr. 258].)

[3] A violation of a civil or criminal discovery rule or statute does not by itself establish a violation of this rule.

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<sup>Ø</sup> This language is bracketed to indicate that comment is sought on which term (“feasible” or “reasonable”) the public believes is appropriate for this rule.

**Rule 3.8 Special Responsibilities of a Prosecutor**  
**(Proposed Rule as Adopted by the Commission on July 5, 2017 – Alternative 2)**

The prosecutor in a criminal case shall:

- (a) not institute or continue to prosecute a charge that the prosecutor knows\* is not supported by probable cause;
- (b) make reasonable\* efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable\* opportunity to obtain counsel;
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights unless the tribunal\* has approved the appearance of the accused in propria persona;
- (d) *Reserved*.<sup>+</sup>
- (e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a current or former client unless the prosecutor reasonably believes:
  - (1) the information sought is not protected from disclosure by any applicable privilege or work product protection;
  - (2) the evidence sought is [essential/reasonably necessary]<sup>⊕</sup> to the successful completion of an ongoing investigation or prosecution; and
  - (3) there is no other [feasible/reasonable]<sup>⊖</sup> alternative to obtain the information; and
- (f) exercise reasonable\* care to prevent persons\* under the supervision or direction of the prosecutor, including investigators, law enforcement personnel, employees or other persons\* assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under rule 3.6.
- (g) When a prosecutor knows\* of new, credible and material evidence creating a reasonable\* likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

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<sup>+</sup> The parts of this rule designated as “*Reserved*” (paragraph (D) and Comments [3] and [4]) are the subject of pending consideration by the State Bar and the Supreme Court of California.

<sup>⊕</sup> This language is bracketed to indicate that comment is sought on which term (“essential” or “reasonably necessary”) the public believes is appropriate for this rule.

<sup>⊖</sup> This language is bracketed to indicate that comment is sought on which term (“feasible” or “reasonable”) the public believes is appropriate for this rule.

- (1) promptly disclose that evidence to an appropriate court or authority, and
- (2) if the conviction was obtained in the prosecutor's jurisdiction,
  - (i) promptly disclose that evidence to the defendant unless a court authorizes delay, and
  - (ii) undertake further investigation, or make reasonable\* efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.
- (h) When a prosecutor knows\* of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

## Discussion

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice, that guilt is decided upon the basis of sufficient evidence, and that special precautions are taken to prevent and to rectify the conviction of innocent persons.\* Rule 3.8 is intended to achieve those results. All lawyers in government service remain bound by rules 3.1 and 3.4.

[2] Paragraph (c) does not forbid the lawful questioning of an uncharged suspect who has knowingly\* waived the right to counsel and the right to remain silent. Paragraph (c) also does not forbid prosecutors from seeking from an unrepresented accused a reasonable\* waiver of time for initial appearance or preliminary hearing as a means of facilitating the accused's voluntary cooperation in an ongoing law enforcement investigation.

[3] *Reserved.*<sup>+</sup>

[4] *Reserved.*<sup>+</sup>

[5] Paragraph (f) supplements rule 3.6, which prohibits extrajudicial statements that have a substantial\* likelihood of prejudicing an adjudicatory proceeding. Paragraph (f) is not intended to restrict the statements which a prosecutor may make which comply with rule 3.6(b) or 3.6(c).

[6] Prosecutors have a duty to supervise the work of subordinate lawyers and nonlawyer employees or agents. (See rules 5.1 and 5.3.) Ordinarily, the reasonable\* care standard of paragraph (f) will be satisfied if the prosecutor issues the appropriate cautions to law enforcement personnel and other relevant individuals.

[7] When a prosecutor knows\* of new, credible and material evidence creating a reasonable\* likelihood that a person\* outside the prosecutor's jurisdiction was convicted of a crime that the person\* did not commit, paragraph (g) requires prompt disclosure to

the court or other appropriate authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. If the conviction was obtained in the prosecutor's jurisdiction, paragraph (g) requires the prosecutor to examine the evidence and undertake further investigation to determine whether the defendant is in fact innocent or make reasonable\* efforts to cause another appropriate authority to undertake the necessary investigation, and to promptly disclose the evidence to the court and, absent court authorized delay, to the defendant. Disclosure to a represented defendant must be made through the defendant's counsel, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to a court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate. (See rule 4.2.)

[8] Under paragraph (h), once the prosecutor knows\* of clear and convincing evidence that the defendant was convicted of an offense that the defendant did not commit, the prosecutor must seek to remedy the conviction. Depending upon the circumstances, steps to remedy the conviction could include disclosure of the evidence to the defendant, requesting that the court appoint counsel for an unrepresented indigent defendant and, where appropriate, notifying the court that the prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted.

[9] A prosecutor's independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of paragraphs (g) and (h), though subsequently determined to have been erroneous, does not constitute a violation of this rule.

**Rule 3.8 Special Responsibilities of a Prosecutor**  
**(Proposed Rule as Adopted by the Commission on July 5, 2017 – Alternative 3)**

The prosecutor in a criminal case shall:

- (a) not institute or continue to prosecute a charge that the prosecutor knows\* is not supported by probable cause;
- (b) make reasonable\* efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable\* opportunity to obtain counsel;
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights unless the tribunal\* has approved the appearance of the accused in propria persona;
- (d) *Reserved*.<sup>+</sup>
- (e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a current or former client represented by the lawyer in a criminal matter unless the prosecutor reasonably believes:\*)
  - (1) the information sought is not protected from disclosure by any applicable privilege or work product protection;
  - (2) the evidence sought is [essential/reasonably necessary]<sup>⊕</sup> to the successful completion of an ongoing investigation or prosecution; and
  - (3) there is no other [feasible/reasonable]<sup>⊗</sup> alternative to obtain the information; and
- (f) exercise reasonable\* care to prevent persons\* under the supervision or direction of the prosecutor, including investigators, law enforcement personnel, employees or other persons\* assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under rule 3.6.
- (g) When a prosecutor knows\* of new, credible and material evidence creating a reasonable\* likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

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<sup>+</sup> The parts of this rule designated as “*Reserved*” (paragraph (D) and Comments [3] and [4]) are the subject of pending consideration by the State Bar and the Supreme Court of California.

<sup>⊕</sup> This language is bracketed to indicate that comment is sought on which term (“essential” or “reasonably necessary”) the public believes is appropriate for this rule.

<sup>⊗</sup> This language is bracketed to indicate that comment is sought on which term (“feasible” or “reasonable”) the public believes is appropriate for this rule.



- (1) promptly disclose that evidence to an appropriate court or authority, and
- (2) if the conviction was obtained in the prosecutor's jurisdiction,
  - (i) promptly disclose that evidence to the defendant unless a court authorizes delay, and
  - (ii) undertake further investigation, or make reasonable\* efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.
- (h) When a prosecutor knows\* of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

## Discussion

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice, that guilt is decided upon the basis of sufficient evidence, and that special precautions are taken to prevent and to rectify the conviction of innocent persons.\* Rule 3.8 is intended to achieve those results. All lawyers in government service remain bound by rules 3.1 and 3.4.

[2] Paragraph (c) does not forbid the lawful questioning of an uncharged suspect who has knowingly\* waived the right to counsel and the right to remain silent. Paragraph (c) also does not forbid prosecutors from seeking from an unrepresented accused a reasonable\* waiver of time for initial appearance or preliminary hearing as a means of facilitating the accused's voluntary cooperation in an ongoing law enforcement investigation.

[3] *Reserved.*<sup>+</sup>

[4] *Reserved.*<sup>+</sup>

[5] Paragraph (f) supplements rule 3.6, which prohibits extrajudicial statements that have a substantial\* likelihood of prejudicing an adjudicatory proceeding. Paragraph (f) is not intended to restrict the statements which a prosecutor may make which comply with rule 3.6(b) or 3.6(c).

[6] Prosecutors have a duty to supervise the work of subordinate lawyers and nonlawyer employees or agents. (See rules 5.1 and 5.3.) Ordinarily, the reasonable\* care standard of paragraph (f) will be satisfied if the prosecutor issues the appropriate cautions to law enforcement personnel and other relevant individuals.

[7] When a prosecutor knows\* of new, credible and material evidence creating a reasonable\* likelihood that a person\* outside the prosecutor's jurisdiction was convicted of a crime that the person\* did not commit, paragraph (g) requires prompt disclosure to

the court or other appropriate authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. If the conviction was obtained in the prosecutor's jurisdiction, paragraph (g) requires the prosecutor to examine the evidence and undertake further investigation to determine whether the defendant is in fact innocent or make reasonable\* efforts to cause another appropriate authority to undertake the necessary investigation, and to promptly disclose the evidence to the court and, absent court authorized delay, to the defendant. Disclosure to a represented defendant must be made through the defendant's counsel, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to a court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate. (See rule 4.2.)

[8] Under paragraph (h), once the prosecutor knows\* of clear and convincing evidence that the defendant was convicted of an offense that the defendant did not commit, the prosecutor must seek to remedy the conviction. Depending upon the circumstances, steps to remedy the conviction could include disclosure of the evidence to the defendant, requesting that the court appoint counsel for an unrepresented indigent defendant and, where appropriate, notifying the court that the prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted.

[9] A prosecutor's independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of paragraphs (g) and (h), though subsequently determined to have been erroneous, does not constitute a violation of this rule.