

AGENDA ITEM

NOVEMBER 10 – Board of Trustees – September 6, 2017 Open Minutes

Board of Trustees Meeting
Wednesday, September 6, 2017
Open Minutes
State Bar of California
845 S. Figueroa St.
2nd Floor, Board Room
Los Angeles, CA

The Board of Trustees of The State Bar of California convened in open session at 9:00 a.m. at the State Bar of California, 845 S. Figueroa Street, Board Room, 2nd Floor, Los Angeles on Wednesday, September 6, 2017, James Fox presiding.

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

Ms. Spector joined the meeting in progress.

The following members of the Board of Trustees were not present: Michael Colantuono, Danette Meyers and Todd Stevens.

The following members of staff were present: Francisco Gomez, 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.

The following individuals provided comment on Item 701 - Decision and Action on Recommendation from Committee of Bar Examiners re California Bar Examination Pass Line - Return from Public Comment.

1. William Wesley Patton
2. Lee H. Wallach, Committee of Bar Examiners
3. Bridget Gramme, Center for Public Interest Law, University of San Diego
4. Mitchel L. Winick, Dean, Monterey College of Law
5. Garo Ghazarian, Dean, Peoples College of Law
6. Anthony Niedwiecki, Dean, Golden Gate University School of Law
7. Marty Pritikin, Dean, Concord Law School
8. Gregory J. Brandes, former Dean, San Francisco Law School
9. Karen Goodman, Chair, Committee of Bar Examiners

30 President's Report

Mr. Fox announced that he had been newly appointed as a Trustee to a second term by the Supreme Court. Mr. Fox mentioned a few of the important changes in 2016-2017 which the Board supported or accomplished: (1) the separation of the 16 State Bar Sections; (2) a dramatic reduction in board size; (3) an all appointed Board and officers; (4) a restructure of Board Committees and sub-entities; (5) a review of staff classification and compensation structures; (6) implementation of three new major information technology systems and a new website design; (7) hiring of a new Chief Trial Counsel; and (8) a new management organizational structure.

Mr. Fox said that the Board should avoid defaulting into a comfortable associational approach and continue to review structures and activities in relation to the State Bar's redefined mission. Mr. Fox continued, stating that the Board's responsibility would be to manage implementation of the vision of the "New State Bar" and to carry out its three primary roles: (1) Advisory body to the Court in its policy and legislative roles; (2) Implementation of policy created by the Court and Legislature; and (3) developer of internal State Bar policy and oversight of staff implementation.

Mr. Fox thanked the Board, the new President, Michael Colantuono, and the new Executive Director, Leah Wilson and said that he was looking forward to rejoining the Board as a Trustee.

30-1 Sunsetting of the President's Recognition Awards and Creation of the State Bar Appreciation Award – *Information only*

On June 30, 2014 the Board created the Presidential Recognition Award. The Board authorized the President to recognize and award up to five recipients for their contributions to the furtherance of the State Bar's missions and goals. The proposal is to sunset the President's Recognition award and to create a State Bar Appreciation Award. The State Bar Appreciation

Award would be given by the State Bar to an individual or more who have contributed greatly toward accomplishing the mission of the Bar. No award would be given out in 2017 and the criteria and procedures would be developed in 2018

30-2 Title 9. Rules on Law Practice, Attorneys, and Judges - Amendments to the CA Rules of Court - *Information only*

In making its appointments to the Committee of Bar Examiners, the Board of Trustees opted to fill only three of the four vacancies, as the Board is looking at the implementation of California Rules of Court Rule 9.4. (a), Nomination and appointment of members to the Committee of Bar Examiners.

Rule 9.4 (a), which becomes effective 2018, empowers the Supreme Court to appoint ten examiners to the CBE, at least one of the ten examiners must be a judicial officer in this state.

40 Executive Director's Report

Ms. Parker thanked the 2015 Board of Trustees for the vision that informed their decision to simultaneously hire her as Executive Director and Leah Wilson as Chief Operating Officer. She noted that Mr. Fox had spoken about the dramatic change begun at the State Bar during the last year and of his hope for continued progress.

She said that this was a “re-set” moment and that the Board should be proud of its efforts. She noted that in the past week she had put in place a new organizational design which she believed would contribute to a successful future for the Bar's leadership.

Ms. Parker acknowledged that the State Bar was a large and complex organization and that its reform needed to be based on an understanding of its history and structure. She credited her work with the Governance in the Public Interest Task Force with providing her with the necessary education. She noted that the 2016 Governance Task Force Report had identified numerous operational problems such as: a lack of consistent centralized control and direction; a proliferation of sub-entities and committees; and a lack of attention to compliance with internal rules, regulations, and statutory direction.

She recounted that the Board had embraced the 2016 Governance Task Force Report and had instructed staff to use it as the base on which to continue analyzing the needs for reform in the 2017 Governance in the Public Interest Task Force.

She added that the work of the 2017 Task Force had gone forward in the context of significant structural change anticipated in the Senate Bill 36 including: the separation of the State Bar Sections; thirty percent reduction in Board size; and an all appointed Board.

Ms. Parker also noted that in late 2016 the State Bar engaged Dr. Elise Walton, a Harvard PhD with a degree in organizational design, to look at the organization and identify structural problems needing correction and proposed modification. Amongst Ms. Walton's observations were the following: the new organizational structure would be more transparent and accountable to the Board; moving to a team-based management structure, with only seven direct reports to the new Executive Director, would build 'bench strength' and a cadre of future leaders for succession planning; the team approach would eliminate the 'key person dependency' that the ED/COO structure created; and the new Chief of Mission Accountability and Advancement would have a greatly enhanced compliance function in order to assure that the State Bar was following all applicable laws, regulations, and policies.

Ms. Parker stated her belief that the State Bar's future was a positive one with a new direction set by SB 36 and changes supported by the Board and new Board leadership committed to continuing this reform effort.

50 Consent Agenda

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

50-1 Licensee Request for Adjustments to Fees and Penalties

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

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

50-2 Resolution of Appreciation to Outgoing President and Board Members

It is customary for the Board to recognize the President and those members of the Board whose terms have expired and to express appreciation and thanks to them for their

outstanding contributions to the Board, the Bar, the membership, and the public during their tenure. Therefore, it is recommended that you adopt the following resolution of appreciation to the outgoing President and Board members:

WHEREAS, Jim Fox, President, Janet Brewer, Terry Flanigan, Danette Meyers, and Richard Ramirez have served this Board and The State Bar of California with devotion and distinction; and

WHEREAS, it is appropriate that the minutes of this meeting officially record the warm gratitude and respect, both personal and professional, of their fellow Board members;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Trustees hereby expresses to Jim Fox, President, Janet Brewer, Terry Flanigan, Danette Meyers, and Richard Ramirez, members of the Board of Trustees, its sincere appreciation for their admirable accomplishments and selfless efforts expended on behalf of the State Bar, and also expresses to them the high esteem and personal affection of their fellow members of the Board.

50-3 Approval for Specified Contracts: Board Book Tab 4.3, Article 1, Section 2 –

WITHDRAWN

50-4 Second Quarter Travel Expense Report

Report received – normally on the Audit Committee Agenda – Review of travel expenses for Trustees and senior management.

50-5 Financial Statement Report, Investment Report and CSF Report for the Quarter ended June 30, 2017

In adherence to the State Bar's Fiscal Control Policies and Procedures, the Office of Finance has prepared the 2017 Second Quarter Financial Report for the Board's review. This financial report consists of three separate reports: Financial Statement Report, Investment Report and Client Security Fund (CSF) Report.

RESOLVED, that the Board of Trustees approve the 2017 Second Quarter Financial Report in the form this day before the Board, for the year ended December 31, 2016, as certified by the Chief Financial Officer, and on file in the San Francisco office of the State Bar.

700 Miscellaneous

701 Decision and Action on Recommendation from Committee of Bar Examiners re California Bar Examination Pass Line - Return from Public Comment

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that following a period of public comment, which included two public hearings, the Board of Trustees accepts the "Report to the Board of Trustees of the California State Bar Final Report on the Standard Setting Study and Public Comments Regarding Pass Line Options" dated September 5, 2017, prepared by State Bar staff; and it is

FURTHER RESOLVED, that the Board of Trustees, ~~following consideration of the recommendation from the Committee of Bar Examiners to maintain the current California Bar Examination cut score at 1440 pending receipt and review of two additional reports concerning the CBX,~~ approves recommending to the Supreme Court of California that it consider the three options relative to the California Bar Examination cut score: 1) maintain the current cut score of 1440, 2) reduce the cut score to 1414 on an interim basis and 3) reduce the cut score to 1390 on an interim basis, effective with the July 2017 California Bar Examination.

FURTHER RESOLVED, that staff is authorized to make technical amendments to the Report prior to its submission to the Supreme Court

All members listed on the slip voted yes, except Jane Brewer, Terry Flanigan, Renee LaBran, Richard Ramirez and Brandon Stallings who voted no.

702 Termination of State Bar - CEB Memorandum of Understanding

Continuing Education of the Bar ("CEB") was established in 1947 as a partnership between the State Bar and the University of California. The current operating agreement for CEB requires that the State Bar appoint 4 of the 9 members of CEB's governing board, and a secondary agreement promotes cooperation between the State Bar Sections and CEB's practice committees. In light of changes at both organizations and a request from CEB that the current agreements be terminated, staff recommends that Board terminate the current agreements and authorize negotiations toward a new agreement that better reflects the new focus of the two organizations.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that based upon the mutual desire by the State Bar and Continuing Education of the Bar to terminate the Memorandum of Understanding (“MOU”) dated September 12, 2001 and the associated agreement between CEB and the State Bar Sections, the State Bar hereby gives notice of its intent to terminate those agreements; and it is

FURTHER RESOLVED, that the State Bar expresses its appreciation for the historical partnership with CEB and encourages the continued informal cooperation between the State Bar Sections and CEB; and it is

FURTHER RESOLVED, that State Bar staff are directed to engage in further discussions with CEB regarding a future relationship between the State Bar and CEB and report back to the Board.

All members listed on the slip voted yes.

703 Update and Funding Request: Ten-Hour New Admittee Continuing Legal Education

At its September 12, 2016, meeting, the Board of Trustees (“Board”) adopted rules recommended by the Task Force on Admissions Regulation Reform (TFARR) to require ten hours of mandatory continuing legal education for new admittees. A Working Group was established to specify the topics of study and oversee the development of the content. This agenda item provides an update on the Working Group’s activities. In addition, this agenda item seeks authorization for a project budget of up to \$250,000. Funding will be used to finalize content development and to secure a full-service multimedia e-learning designer and developer to produce interactive education modules in a Shareable Content Object Reference Model (“SCORM”) format for engagement and tracking purposes. Funding may also be used to retain subject matter experts as consultants to work closely with the e-learning designer. Given the Special Master’s broad authority over significant aspects of 2017 State Bar revenue and expenditures, his approval for project funding will be sought subsequent to Board authorization and prior to any expenditure of funds.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that, pending Special Master review and approval, the Board of Trustees approve the proposed budget amendment of \$250,000 to fund the ten-hour new admittee MCLE project as described above.

All members listed on the slip voted yes.

704 2017-2018 Committee Assignments

INFORMATIONAL

705 Collective Bargaining* Re 7002

WITHDRAWN

706 Sections - Formation of New Corporate Entity

This year's State Bar Fee Bill (SB 36) requires that the State Bar separate the Sections from the State Bar into a new private non-profit association. This item seeks the Board of Trustees' authorization to establish the corporate entity that will house the State Bar Sections and authorizes the transfer of an initial portion of the Sections' financial reserves to the new entity. The Fee Bill also requires that the State Bar and the new entity enter into an agreement setting forth the terms of the future relationship between the State Bar and the new entity. This item would authorize staff to negotiate that agreement and bring it back to the Board of Trustees for approval.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that upon enactment of legislation mandating the separation of the Sections from the State Bar, the Board of Trustees authorize the Executive Director to approve incorporation of the new corporate entity that will become the successor to the State Bar Sections; and it is

FURTHER RESOLVED, that the Executive Director is authorized to transfer part of the Sections' financial reserves to the new entity after its incorporation to assist the entity in paying necessary start-up costs; and it is

FURTHER RESOLVED, that the Executive Director is authorized to negotiate with the Sections the terms of an agreement governing the future relationship between the State Bar and the new entity and to bring the agreement back to the Board of Trustees for approval.

All members listed on the slip voted yes.

707 Approval of Elevator Upgrade Contract

This item requests Board of Trustees approval to enter into a \$2.21 million contract to upgrade the elevators at the Bar's 180 Howard Street, San Francisco building. The main components of the elevator system are original to the building, which was constructed in 1979. The 15-18

month upgrade project will be scheduled for 2018 and 2019, with costs included in the proposed budgets for those years. There is, however, now a waiting period of at least one year for elevator upgrade projects in San Francisco, due to increased construction demand throughout the city. A contract must therefore be executed soon to secure a start date in late 2018. A 10% non-refundable deposit is required at contract execution. Although the deposit will be paid in 2017, it will not impact the 2017 budget, as the payment will not become an expense for the Bar until the project starts in 2018.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees approves the \$2.21 million project to upgrade the elevators at 180 Howard Street, San Francisco, which 1) will result in a \$215,000 expenditure of a non-refundable deposit upon contract execution in 2017 (but will not impact the 2017 budget), and 2) will obligate the Bar (unless the deposit is forfeited) to a \$2.21 million expense (\$2.153 million plus \$57,000 contingency) which will be divided between the 2018 and 2019 annual budgets, or between the 2019 and 2020 budgets if the project cannot start before early 2019.

All members listed on the slip voted yes.

708 Exception to the CalPERS 180 Day Wait Period to Appoint Retired Annuitant

To comply with California Public Employee Retirement System (CalPERS) requirements, Board of Trustees action is required to authorize the State Bar to appoint as a retired annuitant a former employee retired under CalPERS, within six (6) months of that individual's retirement date. In addition, to comply with the State Bar's Policy Restricting Former Members of the Board of Trustees and the Senior Managers Designated by the Executive Director from Doing Business with the State Bar, a waiver under the terms of that policy is also necessary from the Board. Colin Wong, the Chief Court Counsel/Chief Court Administrator for the State Bar Court, is leaving the State Bar and retiring under CalPERS, effective September 8, 2017. His departure creates a critical need to replace the duties he performed for the State Bar, while it is recruiting for a new Chief Court Counsel/Chief Court Administrator to assume Mr. Wong's responsibilities. The State Bar seeks interim short-term assistance from Mr. Wong immediately after his retirement while it is recruiting and bringing on board his replacement. This item authorizes Mr. Wong's appointment by certifying the State Bar's critical need for his unique skills immediately after his retirement.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees adopts the resolution set forth in Attachment B; and it is

FURTHER RESOLVED, that the Board of Trustees waives Section 6 (Policy Restricting Former Members of the Board of Trustees and the Senior Managers Designated by the Executive Director from Doing Business with the State Bar); Article 3 (Contracts); Tab 17 (Control Policies & Procedures), as applied to Colin Wong for good cause, as discussed this date.

All members listed on the slip voted yes.

The Board went into closed session at 1:25 p.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 California Commission on Access to Justice - Appointment of Members

RESOLVED, that the Board of Trustees approve reappointment of Hon. Mark A. Juhas, Los Angeles, as Chair, and Catherine Blakemore, Sacramento, as Vice Chair, California Commission on Access to Justice, for a term commencing January 1, 2018, and expiring December 31, 2018, or until further order of the board, whichever occurs earlier; and it is

FURTHER RESOLVED, that the Board of Trustees approve reappointment of Hon. Lisa R. Jaskol, Monterey Park; and approve appointment of David R. Daniels, Los Angeles; and Panida M. Rzonca, Los Angeles, for terms commencing September 7, 2017, and expiring December 31, 2020, or until further order of the board, whichever occurs earlier

6012 Request to Fill Unexpired Term of Resigning Member - Committee on Mandatory Fee Arbitration

RESOLVED, that the Board of Trustees appoint Nicola “Nick” Migliaccio (Bar No. 163522) to fill an unexpired term on the Committee on Mandatory Fee Arbitration left by a resigning member; and it is

FURTHER RESOLVED, that Mr. Migliaccio's term will expire at the close of the State Bar Annual Meeting in 2019.

6013 Legal Services Trust Fund Commission - Annual Appointment of Officers

RESOLVED, that the Board of Trustees approve reappointment of Richard Reinis and Corey Friedman as Co-Chairs, and Christian Schreiber and Banafsheh Akhlaghi as Co-Vice Chairs for the 2017-2018 State Bar term or until further order of the board, whichever occurs earlier.

6020 Closed Appointments

6021 Committee of Bar Examiners - Appointment of Member

INFORMATIONAL

In making its appointments to the Committee of Bar Examiners, the Board of Trustees opted to fill only three of the four vacancies, as the Board would like to begin early implementation of California Rules of Court Rule 9.4. (a), Nomination and appointment of members to the Committee of Bar Examiners.

Rule 9.4 (a), which becomes effective 2018, empowers the Supreme Court to appoint ten examiners to the CBE; at least one of the ten examiners must be a judicial officer in this state. Consequently, the Board will look to appoint a judicial officer to the CBE and not wait until 2018.

The Board adjourned its closed session at 3:15 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 3, 2017, at a time to be determined.