

# **OPEN SESSION AGENDA ITEM**

**705 JANUARY 2018**

**DATE:** January 27, 2018

**TO:** Members, Board of Trustees

**FROM:** Kevin Harper, Interim Chief Financial Officer

**SUBJECT:** Exception to the CalPERS 180 Day Wait Period to Appoint a Retired Annuitant; Waiver of Board Rule Barring Former Executives from Doing Business with the State Bar

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## **EXECUTIVE SUMMARY**

To comply with California Public Employee Retirement System (CalPERS) requirements, Board of Trustees action is required to waive the 180-day waiting period for 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. Christine Wong, a Program Director II in the Office of Finance, retired from the State Bar on January 2, 2018. Her departure is particularly challenging given the timing of the Bar's annual financial statement audit. Thus, the State Bar seeks interim short-term assistance from Ms. Wong immediately after her retirement and through the financial statement audit process.

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The State Bar of California participates in the CalPERS retirement system. A CalPERS retiree can be appointed to work for the former employer as a retired annuitant. However, under pension reform standards (see Government Code section 7522.56 and 21224), the retired individual to be appointed must meet the following standards:

1. The individual must have specialized skills needed to perform work of limited duration;
2. The individual cannot work more than 960 hours in a fiscal year (July 1 – June 30);
3. The contracted compensation rate cannot be less than the minimum nor exceed the maximum paid to other employees, if any, performing comparable duties;
4. Compensation must be limited to wage rates set forth above and not take the form of other non-wage benefits;
5. The individual cannot have received unemployment insurance benefits for prior retired annuitant work;
6. The individual cannot work as a retired annuitant within six (6) months following his or her retirement date unless the governing Board of the contracting entity certifies to a critical need for the individual's skills within this six month period, as set forth in the resolution passed during public session, which must then be filed with CalPERS;

7. The individual must be the normal retirement age or older at the time of retirement.

Ms. Wong has served in various capacities with the State Bar's Office of Finance since October 2002, including as Senior Accountant/Auditor, Accounting Supervisor, Finance Manager, Finance Director/Controller and Chief Financial Officer. Ms. Wong's last position prior to her retirement was as a Program Director II. During her long tenure, Ms. Wong has come to understand the unique financial and budgetary requirements of the State Bar as well as the Bar's antiquated financial management system. This breadth of knowledge does not exist in any other individual within the State Bar.

As a result of Ms. Wong's highly specialized and relevant set of skills and experience, she is the most qualified to assist the State Bar during the financial statement audit process. Accordingly, the State Bar seeks to appoint Ms. Wong before 180 days lapses from her retirement date.

Because of CalPERS restrictions on contracting with a CalPERS retiree, the Interim Chief Financial Officer is seeking a Board resolution certifying the critical need to appoint Ms. Wong as a retired annuitant within six months of her retirement date, as required by CalPERS. The terms of Ms. Wong's appointment as a retired annuitant are as set forth in Attachment A. The resolution recommended for this Board is set forth in Attachment B.

Additionally, the State Bar seeks from the Board of Trustees a waiver for good cause, described above, of 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]. Section 6 states:

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

Members of the Board of Trustees and Senior Managers designated by the Executive Director, for a period of twelve months following expiration of their term of office or termination of employment, shall not:

- (a) Seek to do, or do, business with the State Bar for monetary gain, or
- (b) Act as agent or attorney for, or otherwise represent any person, for compensation by making any formal or informal appearance, or any oral or written communication before the State Bar, or any officer or employee or agent thereof, if the appearance or communication is for the purpose of influencing official State Bar action, including the awarding or revocation of services, contracts, or the sale or purchase of goods or property.

The Board, or its designee, may waive the requirements of this policy for good cause.

## **FISCAL/PERSONNEL IMPACT**

Ms. Wong's hourly rate of pay as a retired annuitant will be \$ 96.01. Staff does not anticipate that Ms. Wong's retired annuitant appointment will have any significant impact on the State Bar's finances.

## **RULE AMENDMENTS**

None.

## **BOARD BOOK IMPACT**

None.

## **STRATEGIC PLAN GOALS & OBJECTIVES 2017-2022**

### **Goal:**

Goal 3: Improve the fiscal and operational management of the State Bar, emphasizing integrity, transparency, accountability, and excellence.

### **Objective:**

Objective b: Improve productivity through performance accountability, training, and professional development.

Objective d: Reallocate funds to support the discipline system based on expenditure review, revenue enhancement measures, implementation of Bar's reserve policy, and other reengineering efforts.

## **RECOMMENDED BOARD ACTION**

The Staff recommends that the Board of Trustees approve the following resolution:

**RESOLVED**, that the Board of Trustees adopts the resolution set forth in Attachment A; 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 Christine Wong for good cause, as discussed this date.

## **ATTACHMENT(S) LIST**

- A.** CalPERS Resolution

## **Attachment A**

### **RESOLUTION January 27, 2018**

#### **RESOLUTION FOR EXCEPTION TO THE 180-DAY WAIT PERIOD GC sections 7522.56 and 21224**

WHEREAS, in compliance with Government Code sections 7522.56 and 21224, The State Bar of California Board of Trustees must provide CalPERS this certification resolution when hiring a retiree before 180 days has passed since his or her retirement date; and

WHEREAS, Christine Wong has retired under CalPERS as a Program Director II with The State Bar of California effective January 2, 2018; and

WHEREAS, Government Code sections 7522.56 and 21224 prohibit the appointment of a CalPERS retiree as a retired annuitant earlier than 180 days after his or her retirement date without a certification resolution, such as this; and

WHEREAS, Government Code sections 7522.56 and 21224 provide that a certification resolution will not waive the 180 day wait period if the retiree has received any unemployment insurance benefits; and

WHEREAS, Christine Wong certifies that she has not and will not receive any unemployment insurance benefits; and

WHEREAS, The State Bar of California Board of Trustees and The State Bar of California certify that there is a critical need to hire Christine Wong as a retired annuitant within 180 days of her January 3, 2018, retirement date; and

WHEREAS, no matters, issues, terms or conditions related to this appointment as a retired annuitant have been or will be placed on a consent calendar; and

WHEREAS, the appointment as a retired annuitant shall be limited to 960 hours per fiscal year; and

WHEREAS, the compensation paid to the retiree is not less than the minimum (\$12,481) nor exceeds the maximum (\$16,641) monthly base salary paid to State Bar employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the maximum hourly rate for the classification of Program Director II is \$96.01 and the minimum hourly rate for this classification is \$72.01; and,

WHEREAS, the hourly rate paid to Christine Wong for her work as a retired annuitant will be \$96.01 per hour; and

WHEREAS, Christine Wong has not and will not receive any other benefit, incentive, or compensation in lieu of benefits or other form of compensation in addition to this hourly pay rate; and

THEREFORE, BE IT RESOLVED THAT The State Bar of California Board of Trustees hereby certifies the nature of the appointment as described herein and detailed in the attached retired annuitant appointment document as Attachment A, and that this appointment is necessary to perform critically needed duties for The State Bar of California beginning January 3, 2018.