

## **AGENDA ITEM**

### **MARCH 10 – Board of Trustees – November 3, 2017 Open Minutes**

Board of Trustees Meeting  
Friday, November 3, 2017  
Open Minutes  
The State Bar of California  
180 Howard Street,  
4<sup>th</sup> Floor, Board Room  
San Francisco, CA 94105

The Board of Trustees of The State Bar of California convened in open session at 8:30 a.m. at the State Bar of California, 180 Howard Street, 4th Floor, Board Room, San Francisco, CA 94105, Michael Colantuono presiding.

The following members of the Board of Trustees were present: Mark Broughton, Hailyn Chen, Renée LaBran, James Fox Jason Lee, Joanna Mendoza, Sean SeLegue, Stacie Spector, Brandon Stallings, Alan Steinbrecher and Todd Stevens.

The following members of staff were present: Francisco Gomez, Donna Hershkowitz, Vanessa Holton 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. Colantuono called for public comment, inquiring as to whether there were persons in attendance who wished to comment on a particular item on the agenda.

Union representatives Jay Buteyn and Raquel Hines spoke on behalf of the SEIU regarding the ongoing labor negotiations.

The Board went into closed session at 8:40 a.m.

The Board adjourned its closed session at 10:00 a.m.

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Mr. Colantuono 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 addressed the Board regarding the ongoing labor negotiations.

David Chiu, California State Assembly, 17 Assembly District and representatives from the offices of State Senator Nancy Skinner and Assemblymen Rob Bonta.

Gabe Weis, SEIU Sr. Political Organizer and Raquel Hines, Norther California Chapter President.

Union Membership: Jay Buteyn; Alex Calderon; Tara Clark; Anna Dungo; Ben Fuchs; Wes Galan; Zane Halvorsen; Shannon Lozada; Michael Mullen; Braulio Munoz; Britta Pomrantz, Britta; Dan Passamaneck; Laura Sharek; Lynn Taylor; and Kim Warmasley.

## **10 Minutes**

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the minutes of the regular meetings of the Board of Trustees held on July 13-14, 2017 in Los Angeles, California are approved as written; and it is

FURTHER RESOLVED, that the minutes of the special meeting for the election of officers of the Board of Trustees held on July 14, 2017 in Los Angeles, California are approved as written; and it is

FURTHER RESOLVED, that the minutes of the special meeting of the Board of Trustees held on August 9, 2017, by conference call and in San Francisco & Los Angeles, California are approved as written; and it is

FURTHER RESOLVED, that the minutes of the special meeting of the Board of Trustees held on September 6, 2017, in Los Angeles, California are approved as written; and it is

FURTHER RESOLVED, that the minutes of the special meeting of the Board of Trustees held on September 7, 2017, in Los Angeles, California are approved as written; and it is

FURTHER RESOLVED, that the minutes of the special meeting of the Board of Trustees held on October 6, 2017, by conference call and in San Francisco & Los Angeles, California are approved as written.

All members listed on the slip voted yes, except Mr. SeLegue who abstained.

## **30 President's Report**

Mr. Colantuono generally addressed the current labor negotiations stating the State Bar would work to reach agreement and values its employees.

Mr. Colantuono noted that on November 2, the California Supreme Court issued an order that put into place an important new ethical rule regarding the special responsibilities of prosecutors to disclose exculpatory evidence.

Mr. Colantuono reported that the State Bar Board of Trustees had provided the Supreme Court with a set of recommendations for the cut score, ranging from doing absolutely nothing to lowering it to 139. Mr. Colantuono stated that other state bar exam studies are ongoing, and the court expected them to

be completed and encouraged the State Bar and California law schools to work cooperatively together to examine things like student metrics, teaching techniques and how such data could be used to improve instruction in regards to preparing California law students to pass the bar and practice law.

Mr. Colantuono anticipated that the last remaining recommendation of the 2017 Governance in the Public Interest Task Force, a cyclical trustee training calendar, would be brought to the Board for adoption at the January 2018 Strategic Planning Session.

Mr. Colantuono advised the Board that he had continued the CEO / Presidents calls and advised that the voluntary bars had made a great effort to respond to those affected by the Northern California wild fires.

Mr. Colantuono noted that there would definitely be a December 1 Board meeting and that the agenda would be extensive.

### **30-1 Board of Trustees Multi-Year Meeting Schedule - Proposed Approval**

This item amends the Multi-Year Board meeting schedule of regular meetings for 2017-2018, which was approved by the Board of Trustees on September 7, 2017. This calendar amends the 2017-2018 board meeting schedule by adding Thursday, January 25, 2018 to the 2018 planning meeting to accommodate Admissions / Discipline Day (Jan. 25-27) as well as by including the 2019 meeting dates.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board 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.

### **40 Executive Director's Report**

Ms. Wilson advised that in future she would submit written reports to the Board.

Ms. Wilson stated that the values that guide her work are honesty, candor, responsibility and equity; informed and grounded in fact with all information made available.

Ms. Wilson reported on managements on ongoing efforts in the current labor negotiations.

Ms. Wilson reminded the Board that they would be asked to authorize a 45-day public comment period for a proposed court rule to implement a fingerprinting requirement for active licensed attorneys under the recent amendments to Business and Professions Code section 6054, effective January 1, 2018. Pursuant to the California Supreme Court's recent directive, the proposed rule requires all active licensed attorneys to submit or resubmit fingerprints to the Department of Justice by a set deadline and to pay the fingerprint processing and furnishing costs in connection with such submissions.

## **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.

### **54-111 - 2017 Governance in the Public Interest Task Force Recommendations re Adoption of Revised Board Book Main Section 1, Tab 1.1 and Main Section 2, Tab 2.4; re Timeline for Completion of Sub-Entity Review; and re Elimination of Board Liaison (to Sub-Entity) Policy**

On May 15, 2017, the 2017 Governance in the Public Interest Task Force (Task Force) filed its third triennial report. The 2017 Task Force Report contains recommendations for changes in the operational and governance structure of the State Bar. This agenda item places before the Board of Trustees for approval the following matters relating to the implementation of those Task Force recommendations: (1) a timeline for completion of the sub-entity review; and (2) modification of the Board Liaison Policy. It also places before the Board of Trustees for approval proposed revisions to the Board Book including amendments to Tab 1.1 (containing the State Bar Mission Statement), amendments to Tab 2.4 (containing the Board Liaison Policy) and general clean up.

RESOLVED, that the Board of Trustees direct the Programs Committee and the Regulation and Discipline Committee, and assigned Board Committee Coordinators and other responsible staff, to complete the sub-entity review pursuant to Appendix I of the 2017 Governance in the Public Interest Task Force Report by August 31, 2018, the end of the current Board year; and it is

RESOLVED, that the Board of Trustees approve modifications to the Board Liaison policy to provide that decisions by the President of the Board of Trustees to appoint a Board member as a liaison to a sub-entity shall be made in consultation with the Chair and Co-Chair of the Board committees, and to authorize the Chair and Co-Chair of a Board committee to recommend to the President of the Board of Trustees that a liaison appointment be made to a sub-entity under the Board committee's oversight authority; and it is

FURTHER RESOLVED, that the Board of Trustees approves revisions to the Board book, Tab 1.1 and Tab 2.4, as presented to the Board this day and as contained in Attachments B and C, and authorizes staff to make technical edits and corrections to Tabs 1.1 and Tab 2.4 as needed.

### **54-131 - Annual Recommendation to the Supreme Court for Expungement of Suspensions of Non-Payment of Fees in Accordance with Rule of Court 9.6(b)**

California Rule of Court 9.6(b) provides for an annual Board recommendation of expungement to the California Supreme Court of non-disciplinary suspensions within limited circumstances. There are approximately 75 licensed attorneys who have one fee suspension that occurred more than 7 years ago, for 90 days or less, have no other record of suspension or involuntary inactive enrollment for

discipline or otherwise and whose eligible fee suspensions have not already been expunged. Pursuant to Rule 9.6(b), they are eligible for recommendation that the Supreme Court grant a one-time only expungement. If the Board approves this year's recommendation, a list of eligible attorneys will be transmitted to the Supreme Court for its order of expungement.

RESOLVED, that the Board of Trustees hereby approve staff to make the annual recommendation to the California Supreme Court that eligible suspensions that meet the criteria for expungement set forth in California Rule of Court 9.6 be expunged; and it is

FURTHER RESOLVED, that, upon the Court's order of expungement, staff is directed to immediately expunge the suspensions from the licensed attorneys' records and notify each attorney of the Court's order and the expungement.

#### **54-132 - Annual Recommendation for Expungement of Administrative Inactive Statuses for MCLE Non-Compliance in Accordance with Rule of Court 9.31**

California Rule of Court 9.31 now provides for the expungement of records of inactive enrollment for failure to comply with MCLE requirements, within limited circumstances. There are approximately 409 attorneys who have one such inactive enrollment that occurred more than 7 years ago and lasted for 90 days or less, and who have no other record of suspension or involuntary inactive enrollment for discipline or otherwise, nor any prior expungements. Pursuant to Rule 9.31, they are eligible for a one-time only expungement of the record of inactive enrollment. If the Board approves staff's recommendation, those eligible inactive enrollments will be expunged.

RESOLVED, that the Board of Trustees hereby delegates to staff the function of determining the records of inactive enrollment for failure to comply with MCLE requirements that qualify for expungement pursuant to California Rule of Court 9.31(f); and it is

FURTHER RESOLVED, that staff then immediately expunge the eligible inactive enrollments from the licensed attorneys' records, and notify each attorney of the expungement.

#### **54-133 - Annual Recommendation re Members in Non-Compliance with MCLE Audit**

Pursuant to California Rules of Court, Rule 9.31, State Bar staff request permission to enroll all attorneys of MCLE Compliance Group 3 (last names N-Z) who have not complied with MCLE Audit requirements by February 1, 2018, as administratively inactive, and place them on "Not Eligible to Practice" status effective February 2, 2018. This item also authorizes staff to remove members from this inactive status once they have provided proof of compliance and paid all non-compliance fees. In

addition, staff requests permission to act on any other Group 1, Group 2, and Group 3 attorneys who were granted MCLE modifications (extensions of time) for a prior period and who have not complied by their extended deadlines.

RESOLVED, that the Board of Trustees approve that pursuant to California Rule of Court 9.31 and the Rules of the State Bar, those attorneys in MCLE Compliance Group 3 who were audited and who do not bring themselves into compliance with their MCLE Audit requirements by February 1, 2018, as well as those attorneys who have failed to comply with their modified MCLE requirement by February 1, 2018, be enrolled as inactive and placed on “Not Eligible to Practice” status in State Bar records, effective February 2, 2018; and it is

FURTHER RESOLVED, that the Board of Trustees hereby authorizes staff to remove an attorney from administrative inactive status once the attorney has provided proof of compliance and paid all noncompliance fees.

#### **54-141 - 2018 Schedule of Fees, Penalties, Charges and Deadlines**

This item provides for setting 2018 annual licensing fees (fees for active licensees at a total amount of \$430; fees for inactive licensees at a total amount of \$155), as permitted under California Business and Professions Code, section 6140, et seq.; and also provides for placing the associated fees, penalties and deadlines on the State Bar’s Schedule of Charges and Deadlines (Appendix A).

RESOLVED, that the Board of Trustees approve and set, effective January 1, 2018, the annual licensing fee for active status at \$430 and the annual licensing fee for inactive status at \$155; and it is

FURTHER RESOLVED, that, as required by Business and Professions Code section 6140.05, a \$5 deduction from annual fees be provided to each attorney who elects not to fund State Bar lobbying and other legislative activity; and it is

FURTHER RESOLVED, that for the Legal Services Assistance Fee under Business and Professions Code section 6140.03, a \$40 deduction from the annual fee be provided to each attorney who elects not to have this amount allocated to support nonprofit organizations that provide free legal services to persons of limited means; and it is

FURTHER RESOLVED, that the 2018 annual fees for new attorneys admitted in 2018 be set as follows: fees of \$430 for those admitted between January 1 and May 31, 2018 and \$215 for those admitted between June 1 and November 30, 2018; and it is

FURTHER RESOLVED, that the deadlines and penalties as proposed on the attached “Appendix

A: Schedule of Charges and Deadlines for 2018” (Attachment A), be applied to delinquent 2018 annual fees; and it is

FURTHER RESOLVED, that the MCLE noncompliance fee remain set at \$75, the MCLE audit deficiency fee remain set at \$200, and the MCLE reinstatement fee to terminate MCLE inactive enrollment remain set at \$200; and it is

FURTHER RESOLVED, that the interest on assessed costs for reimbursement to the Client Security Fund be set at 10% annually calculated from the date of disbursement as set forth by the Board, pursuant to Business and Professions Code §6140.5(c); and it is

FURTHER RESOLVED, that the administrative penalty on failure to comply with binding arbitration is charged at a fee not to exceed 20% of the amount ordered refunded to the client or \$1,000 whichever is greater.

**100 Reports of Board Committees**

**110 Board Executive Committee**

**112 - 2017 Governance in the Public Interest Recommendations re Adoption of Trustee Skills Matrix; and re Study of Board Vacancy Issue**

On May 15, 2017, the 2017 Governance in the Public Interest Task Force (Task Force) filed its third triennial report. The 2017 Task Force Report contains recommendations for changes in the operational and governance structure of the State Bar. Two of the 2017 Task Force recommendations fall within the purview of the Board Executive Committee’s charter: (1) Adoption of a Trustee Skills Matrix; and (2) Study of the Board Vacancy Issue. This agenda item requires no action by the Board of Trustees, and is intended as a report from the Board Executive Committee for informational purposes only. Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board Executive Committee adopt the Trustee Skills Matrix in implementation of the 2017 Governance in the Public Interest Task Force recommendations; and it is

FURTHER RESOLVED, that the Board Executive Committee develop approaches to address the Board vacancy problem in implementation of the 2017 Governance in the Public Interest Task Force recommendations.

All members listed on the slip voted yes.

**120 - Regulation and Discipline Committee**

**121 - San Francisco District Attorney Request for Proposed New Rule of Professional Conduct**

The Committee on Professional Responsibility and Conduct (“COPRAC” or “Committee”) has received a request for a new rule of professional conduct seeking to prohibit an attorney from disclosing a person’s immigration status in open court or include that information in a public record, absent certain

circumstances. This agenda item presents a recommendation from COPRAC and staff that the Board of Trustees (“Board”) refer this proposal to the Commission for the Revision of the Rules of Professional Conduct (“Commission”) to provide their input concerning the proposed new rule request.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, to assign the issue to COPRAC, authorize the Rules Revision Commission to review the proposal, and to report to COPRAC as the Commission sees fit, with COPRAC to report its conclusions and recommendations back to RAD at its January meeting.

All members listed on the slip voted yes.

### **130 - Programs Committee**

#### **134 - Proposed Amendments to the Law School Regulation Statutes and Rules re Mandatory Accreditation of Law Schools**

During its April 2017 meeting, the Committee of Bar Examiners (CBE) approved in principle amendments to: 1) the California Rules of Court – Chapter 3. Legal Education, Rule 9.30 Law School Study in Schools Accredited or Registered by the Committee of Bar Examiners; 2) Business & Professions Code, Section 6046.7, Section 6060, and Section 6060.7; 3) Accredited Law School Rules; and 4) Guidelines for Accredited Law School Rules, subject to a public comment period and final approval by the Board of Trustees and the Supreme Court. Among several other changes, the proposed amendments would mandate that all unaccredited law schools become accredited over a set period of time and permit the accreditation of online law schools. If the proposed amendments to the Business & Professions Code are ultimately approved in concept, they would be included in the State Bar’s legislative program.

The CBE requested authorization from the Board of Trustees to circulate the proposed amendments to the California law school statutes and rules regarding the regulation of law schools by the Committee for a 45-day public comment period; the Board authorized a public comment period, which ended on September 15, 2017, and no public comments were received.

During its October 2017 meeting, the CBE approved the various rules in concept, and requests that the Board of Trustees also approve them for submission to the California Supreme Court for its review, approval and adoption of the proposed amendments to the Rules of Court. If approved by the Court, the proposed amendments would then be included in the State Bar’s legislative program.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that following a period of public comment during which no comments were received, the proposed amendments to the California Rules of Court, Rule 9.30; to the California Business & Professions Code, Sec. 6046.7, Sec. 6060, and Section 6060.7; and to the Accredited Law School Rules, in the form attached, be approved in principle;



RESOLVED, that a request be submitted to the California Supreme Court seeking its review and approval in principle of the proposed amendments to Business & Professions Code, Section 6046.7, Section 6060, and Section 6060.7, and that such request be accompanied by the proposed amendments to Title 4, Admissions and Educational Standards, Division 2. Accredited Law School Rules, which would become effective if the proposed amendments are ultimately enacted;

RESOLVED, that a request be submitted to the California Supreme Court seeking its review and adoption of the proposed amendments to Rule 9.30 of the Rules of Court, and that such request be accompanied by the proposed amendments to Title 4, Admissions and Educational Standards, Division 2. Accredited Law School Rules, which would become effective if the proposed amendments to the statutes and Court rule are enacted and adopted;

FURTHER RESOLVED, that if the proposed amendments to the California Business & Professions Code are approved by the Court and the proposed amendments to the Rules of Court are adopted by the Court, the proposed statutory amendments be included in the State Bar's legislative program.

All members listed on the slip voted yes.

### **135 - Proposed Amendments to Law School Regulation Rules to Require 6 Units of Competency Training – Return from Public Comment**

During its November 2016 meeting, the Board of Trustees (Board) asked that the Committee of Bar Examiners (CBE) consider amending the law school regulation rules for the schools for which the CBE has oversight to require 6 units of competency training as a curriculum requirement.

The CBE approved in principle a proposed new Rule 4.160(F) (Competency Training) of the Accredited Law School Rules and the proposed new Rule 4.240(F) (Competency Training) of the Unaccredited Law School Rules, subject to a 45-day public comment period and final approval by the Board. The proposed new rules were circulated for public comment, which ended on September 5, 2017, and no public comments were received. During its October 2017 meeting, the CBE adopted the rules, subject to the Board of Trustees' approval.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that following a period of public comment, the Board of Trustees approves proposed new "Rule 4.160(F) (Competency Training)" of the Accredited Law School Rules and the proposed new "Rule 4.240(F) (Competency Training)" of the Unaccredited Law School Rules in the form attached hereto, effective with those students enrolled in their first year of law study on or after January 1, 2018.

All members listed on the slip voted yes.

### **136 - Report on California Bar Examination Content Validation Study**

This agenda item summarizes the results of the Content Validation Study and identifies possible next steps, including future assessment of CBX content and format, which were considered by the CBE during its October 2017 meeting. After review of the report and recommendations, the CBE affirmed the current scope of subjects tested on the California Bar Examination and supports conducting a California job analysis study and an additional content validation study before taking any further actions to modify the scope and make any other changes to the CBX, and by this report, makes this recommendation to the Board of Trustees.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustee accepts the “Conducting a Content Validation Study for the California Bar Exam” prepared by Chad Buckendahl, Ph.D. and the report on the study prepared by State Bar staff; and it is

RESOLVED, that the Board of Trustees recommends that the current scope of subjects tested on the California Bar Examination not be modified at this time and that position be reported to the California Supreme Court; and it is

RESOLVED, that the California Supreme Court be advised that the State Bar intends to conduct a California job analysis study, followed by a revised Content Validation Study, which will inform further discussions of possible future changes to the content, development, format and grading of the California Bar Examination; and it is

FURTHER RESOLVED, that staff further investigate the best method and costs associated with conducting these future studies for report back to the Board of Trustees at its January 2018 meeting.

All members listed on the slip voted yes.

**137 Proposed Amendments to Statute re Bar Examination Application Deadlines – WITHDRAWN**

**140 Finance and Planning Committee – Todd Stevens**

**142 Proposed Adjustments to Law School Fees**

Based on staff research documented in a series of reports to the Committee of Bar Examiners (Committee) this year, staff has estimated a shortfall of \$279,000 between revenues and expenses for the Law School Regulation program. Rather than attempt to close the gap completely – which would result in fees that would be unmanageable for some of the smallest schools – staff recommended raising the inspection fees 20 percent and the annual reporting fees 25 percent for all law schools under their jurisdiction. In addition, changes were also recommended to transition to an annual installment schedule for the California Accredited Law Schools (CALS), as opposed to the current process which involves a sizeable fee paid once every five years. After returning from public comment<sup>1</sup> and considering two differing billing models, and the Committee now recommends the fee increases above and continued use of the true-up billing method for the CALS inspections.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees approve annual compliance reporting fees for all CALS and registered Unaccredited Law Schools be increased 25% from existing amounts; and it is

FURTHER RESOLVED, that site inspection fees for registered Unaccredited Law Schools be increased 20% over the existing tiered rates; and it is

FURTHER RESOLVED, that the hourly rate for CALS site inspections be increased 20% and paid in advance via five equal annual installments of \$4,440; and it is

FURTHER RESOLVED, that the full amount of any installment payments made in advance of the final reports delivered to the Committee be credited against the total amount due for the inspection cycle itself; and it is

FURTHER RESOLVED, that new fees listed above be effective January 1, 2018.

All members listed on the slip voted yes.

#### **143 - 2018 State Bar Preliminary Budget**

This agenda item requests the Board of Trustees to adopt the 2018 preliminary budget. This preliminary budget will be filed with the State Legislature to meet the November 15 statutorily required submission deadline. It will also provide State Bar staff with 2018 spending authority effective January 1, 2018.

The final 2018 budget will be presented to the Board in January 2018. That version of the budget will include more explanatory information to make the budget easier to read and more useful to stakeholders. That additional explanatory information will include narratives, accomplishments, objectives, performance measures, and Executive Director's message. The time between preliminary and final budget development will also be used to do further analysis of certain budget issues requiring more study, including capital improvement costs, the staffing needed to implement new fingerprinting requirements, costs associated with additional California Bar Exam studies, and the funding model used to support the Bar's diversity work. In addition, the results of pending negotiations with the new Sections entity, California Lawyers Association, will be incorporated into the final budget.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees hereby adopts the 2018 Preliminary Budget in the form presented to the Board this day; and it is

FURTHER RESOLVED, that the Board of Trustees hereby authorizes staff to make technical adjustments and corrections to the 2018 Preliminary Budget prior to submitting it to the Legislature on November 15, 2017.

FURTHER RESOLVED, that the Board hereby amends Tab 4.1, Article 1, Section 1, Paragraph (a) of the Board Book to read as follows:

#### Section 1 Adoption and Amendment of Budget

(a) The Board of Trustees shall adopt, by resolution, an annual expenditure budget for each budgetary fund of the State Bar. The State Bar's expenditures are formally governed at the cost center level through the annual budget resolution adopted by the Board. The budget allocates spending authority within each fund across the departments of the State Bar. The Office of Finance shall ensure that the annual budget that it presents to the Board for adoption (a) is at the cost-center level, in compliance with the requirements of Business and Professions Code section 6140.1; (b) includes a proposed budget for the current calendar fiscal year; and (c) reports variances by cost center between actual revenues and expenditures for the previous fiscal year and budgeted figures. Cost center refers to the departments of the State Bar and those units or other subdivisions within a department, whose managers are responsible for all its associated direct and indirect costs and for which budget authority is conferred by an adopted budget. For purposes of the budget, cost center units may include a combination of subunit data provided that a meaningful level of detail is provided to the Board.

All members listed on the slip voted yes.

#### **700 Miscellaneous**

##### **701 Proposed Supreme Court rule for fingerprinting of applicants and active licensed attorneys- Request for Public Comment**

This agenda item requests the Board of Trustees to authorize a 45-day public comment period for a proposed court rule to implement a fingerprinting requirement for active licensed attorneys under the recent amendments to Business and Professions Code section 6054, effective January 1, 2018. Pursuant to the California Supreme Court's recent directive, the proposed rule requires all active licensed attorneys to submit or resubmit fingerprints to the Department of Justice by a set deadline and to pay the fingerprint processing and furnishing costs in connection with such submissions.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees authorizes staff to make available for a 45-day public comment period, the proposed rule to the California Supreme Court included as Attachment 4 to this agenda item.

All members listed on the slip voted yes.

##### **702 - Update on Sections Association Transition Plan**

SB 36 requires the State Bar to separate the Sections into a private nonprofit corporation effective January 1, 2018. This item provides an update on the work being conducted by State Bar staff and the Council of Sections to accomplish this transition. This item also details two agreements being

negotiated between State Bar staff and the Council of Sections: (1) a Memorandum of Understanding detailing the terms of the separation of the Sections and the conditions for future collection of CLA membership fees by the State Bar; and (2) a potential services agreement under which the State Bar would provide staff support services and office space to the new Sections association during a transition period. The item seeks board authorization for staff to finalize negotiation of these agreements and return them to the Board for approval at its December 1, 2017, meeting.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees authorize staff to continue negotiation of a MOU and potential services agreement and office space lease with the Council of Sections consistent with the parameters described in this agenda item and instruct staff to bring the agreements back to the Board for approval at its December 1, 2017 meeting.

All members listed on the slip voted yes.

### **703 - Proposed Rule 5-110(E) of Rules of Professional Conduct of the State Bar of California - Return from Public Comment (Difuntorum)**

On May 1, 2017, the Supreme Court of California ("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 denied but the Court's order directed the State Bar to reconsider whether this ethical obligation should apply to all lawyers, not only prosecutors.<sup>1</sup> The Board of Trustees ("Board") referred this matter to the Commission for the Revision of the Rules of Professional Conduct ("Commission") for further study. On July 15, 2017, the Commission circulated for a 45-day public comment period three alternative rule proposals concerning the ethical obligations applicable when a subpoena is issued to a lawyer to present evidence about a former or current client. Five public comments were received, including a comment from the Office of Chief Trial Counsel ("OCTC"). Following consideration of the public comments at the Commission's meeting on October 24, 2017, this agenda item presents the Commission's recommendation that the Board cease consideration of a rule concerning issuing a subpoena to an attorney. This agenda item also requests the Board to direct staff to submit a supplemental memorandum to the Court in order to report on the changes to proposed rule 3.8, the counterpart to current rule 5-110, which was submitted on March 30, 2017.

Upon motion made, seconded and 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 recommends that no rule of professional conduct addressing the ethical obligations applicable when a subpoena is issued to a lawyer to present evidence about a former or current client be adopted; and it is

FURTHER RESOLVED, that upon the recommendation of the Commission for the Revision of the Rules of Professional Conduct, that the Board of Trustees adopt proposed amended rule 3.8 of the Rules of Professional Conduct, in the form attached to these minutes; and it is

FURTHER RESOLVED, that staff is directed to submit to the Supreme Court of California a request that the prior proposed rule 3.8 as submitted on March 30, 2017 be withdrawn and substituted with the proposed new rule attached to these minutes.

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

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

The Board considered appointments in closed and the action taken is reported below.

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 - Recommendation for Interim Appointments**

RESOLVED, that the Board of Trustees approve the interim appointment of Hon. Timothy P. Dillon as a member of the California Commission on Access to Justice, for a term commencing November 3, 2017, and expiring September 14, 2018, or until further order of the board, whichever occurs earlier. In 2018, Judge Dillon will be eligible for reappointment to the Commission for a full three-year term.

#### **6012 Client Security Fund Commission - Recommendation for Appointments**

RESOLVED, that the Board of Trustees approve the appointment of Robert C. Bowman, Jr. to the Client Security Fund Commission, effective immediately, the member to serve a term expiring as indicated, or until further order of the Board of Trustees whichever occurs earlier.

#### **6013 Mandatory Fee Arbitrators - Recommendation for Appointment and Reappointment of Arbitrators and Presiding Arbitrator**

RESOLVED, that the Board of Trustees hereby reappoints the fee arbitrators whose names appear on the list attached hereto as Attachment A to the State Bar Mandatory Fee Arbitration Department; each for a one-year term commencing January 1, 2018, and expiring December 31, 2018; and it is

FURTHER RESOLVED, that the Board of Trustees appoints the five (5) applicants whose names appear on the list below to the State Bar Mandatory Fee Arbitration Department, each for a term commencing November 3, 2017, and expiring December 31, 2018:

<u>Name</u>	<u>County</u>	<u>Bar Number</u>
Dench, Donald S.	San Bernardino	191953
Fusselman, Ian	San Diego	198917
Lang, Craig	Los Angeles	220855
Owens, James M.	Los Angeles	82599
Zacharin, Alan J.	San Diego	148148

and it is

FURTHER RESOLVED, that the Board of Trustees reappoints Kenneth E. Bacon, Sacramento, as the State Bar's Presiding Arbitrator effective January 1, 2018 and **expiring December 31, 2018.**

**6014 Public Law Section - Recommendation for Interim Appointment**

RESOLVED, that the Board of Trustees approve the appointment of Caroline Fowler as Co-Vice Chair of the Public Law Section Executive Committee, effective immediately, the member to serve a term expiring as indicated, or until further order of the Board of Trustees whichever occurs earlier.

**6015 Lawyer Assistance Program - Recommendation for Reappointment of Chair**

RESOLVED, that upon the recommendation of the Board Executive Committee, the Board hereby appoint Stewart Hsieh, Los Angeles, chair, Lawyer Assistance Program Oversight Committee, for a term commencing January 1, 2018, and expiring December 31, 2018, or until further order of the Board, whichever occurs earlier.

The Board resumed its closed session at 12:51 p.m.

The Board adjourned its closed session and meeting at 2:07 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, 2<sup>nd</sup> Floor, Los Angeles, CA 90017, on Friday, March 9, 2018, at a time to be determined.