

AGENDA ITEM

MARCH 10 – Board of Trustees – December 1, 1017, Open Minutes

BOARD OF TRUSTEES MEETING

Friday, December 1, 2017

Open Minutes

The State Bar of California

Conference Call

180 Howard St., 8th Floor, Room 8B, San Francisco, CA 94105

845 S. Figueroa St., 2nd Floor, Room 2A, Los Angeles, CA 90017

The Board of Trustees of the State Bar of California convened in open session at 11:00 a.m. at the State Bar of California, 180 Howard St., 8th Floor, Room 8B, San Francisco; 845 S. Figueroa St., 2nd Floor, Room 2A, Los Angeles; and by conference call on Friday, December 1, 2017, Michael Colantuono presiding. The Board of Trustees took out of order Agenda Item #701, Public Hearing regarding Impasse between Service Employees International Union and the State Bar of California over Salary Ranges for the Public Service Representative Classification Series (Cal. Gov. Code section 3505.7), after which the Board of Trustees went into closed session at 11:30. Closed session ended at 1:30 p.m., at which time the Board of Trustees reconvened in open session. The Board of Trustees went back into closed session at 3:04 p.m., and adjourned its meeting at 3:18 p.m.

The following members of the Board of Trustees were present: Mark Broughton, Hailyn Chen, James Fox, Renee LaBran, Jason Lee, Sean SeLegue, Stacie Spector, Alan Steinbrecher and Todd Stevens. Jason Lee joined the meeting in progress.

The following members of the Board of Trustees were not present: Joanna Mendoza.

The following members of the staff were present: Saul Bercovitch, James Chang, Randall Difuntorum, Dina DiLoreto, Donna Hershkowitz, Vanessa Holton, Linda Katz, Newton Knowles, Jay Lee, Nicole Pereira, Robert Retana and Leah Wilson.

The meeting was called to order. The roll call was taken. A quorum was established.

Mr. Colantuono called for public comment, inquiring whether there were persons in attendance who wished to make public comment. There was no public comment.

30 – President’s Report

30-1 2018 State Bar Preliminary Budget – Update

On November 2, 2017, the Board of Trustees adopted the State Bar’s 2018 Preliminary Budget. The Board authorized staff to make technical adjustments and corrections to the Budget prior to submitting it to the Legislature on November 15, 2017. On November 15, 2017, staff filed the

2018 Preliminary Budget with the Legislature. Outlined below are the technical adjustments and corrections made to the version of the Preliminary Budget that was previously approved by the Board:

1. Budget (Attachment A) – Added footnote to Projected Reserve Schedule by Fund on page 58. Added name of cost center and changed sequence of lines on page 29. Added page 172 to show activity in the SF Tenant Improvement Fund and revised the Statements of Fund Condition on pages 1-2 to include that activity.
2. Board Agenda Report (Attachment B) – Corrected certain amounts to agree with the Budget document. Enhanced descriptions of (a) personnel expenses and (b) catering, professional services and temporary services expenses.

50 Consent Agenda

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

50-1 Financial Statements for the Quarter Ended September 30, 2017; Investment Report for the Quarter Ended September 30, 2017; and Client Security Report for the Quarter Ended September 30, 2017

In adherence to the State Bar's Fiscal Control Policies and Procedures, the Office of Finance has prepared the 2017 Third 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.

50-2 Approval for Specified Contracts (Board Book Tab 4.3, Article 1, Section 2)

1.Lawyer Assistance Program – Amendment to LAP Consulting

This item requests approval to amend an existing contract with Krill Strategies, LLC, a consulting firm engaged to evaluate the Lawyer Assistance Program and provide recommendations on program design, implementation, and improvement. The existing 2017 contract is for \$68,000. The proposed amendment for additional services adds \$82,000 for additional work on the implementation of recommendations from the first phase of work and to provide content for Continuing Legal Education on substance abuse and mental health challenges facing attorneys, bringing the total contract value to \$150,000.

2.Agreement Ten-Hour New Attorney Training Program - Request for Authorization for Funding for Learning Management System (LMS)

At its October 6, 2017, meeting, the Board of Trustees approved the procurement of an e-learning vendor to develop the interactive education modules for the State Bar's 10-Hour

New Attorney Training Program. This agenda item seeks Board approval for consulting services to implement a Learning Management System which is required to host the new program.

700 Miscellaneous

701 Report and Recommendations From Factfinder - Public Hearing Regarding Impasse between Service Employees International Union and the State Bar of California over Salary Ranges for the Public Service Representative Classification (Cal. Gov. Code 3505.7)

Taken out of order at the start of the meeting before closed session. Report only.

702 Approval of Agreements Relating to Separation of the Sections from the State Bar

At its November 3, 2017, meeting, the Board of Trustees instructed staff to finalize agreements relating to the separation of the Sections from the State Bar into a new nonprofit corporation to be called the California Lawyers Association (“CLA”). The three agreements are (1) a Memorandum of Understanding detailing the terms of separation and establishing a framework for future collection of CLA membership dues by the State Bar; (2) an employee leasing agreement allowing State Bar employees to support CLA during a six-month to one-year transition period; and (3) an office lease agreement under which CLA, as a third-party tenant, will rent a portion of the current Office of Education space from the State Bar

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees authorizes staff to finalize and execute the Memorandum of Understanding and Employee Leasing Agreement with the California Lawyers Association.

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

703 Establishment of Malpractice Working Group Pursuant to Business and Professions Code § 6069.5 (a)

Business and Professions Code section 6069.5, enacted as part of the 2018 State Bar fee bill (SB 36, Stats. 2017, ch. 422) directs the State Bar to conduct a review and study regarding errors and omissions insurance for attorneys licensed in California. Areas of study include the availability of insurance; measures for encouraging attorneys to obtain insurance; recommended ranges of insurance limits; the adequacy of the disclosure rule regarding insurance, and; the advisability of mandating insurance for licensed attorneys. The State Bar is required to report its findings to the Supreme Court and the Legislature by March 31, 2019. The most effective means to conduct this review and develop recommendations is to convene a working group composed of members with wide ranging expertise. This item requests that the Board: 1) authorize the working group; 2) appoint Randall Miller, current Chair of the Bar’s Professional Liability Committee, to chair this

working group; and 3) and direct staff to work with Mr. Miller and the Chair and Vice-Chair of the Regulation and Discipline Committee to develop the working group charter and recommendations for working group membership to be presented to the President of the Board of Trustees.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees authorizes the formation of a Malpractice Insurance Working Group to undertake the review and study mandated by Section 6069.5 of the Business and Professions Code; and it is

FURTHER RESOLVED, that the Board of Trustees appoints Randall Miller to chair the Malpractice Insurance Working Group; and it is

FURTHER RESOLVED, that the Board of Trustees directs staff to work with Mr. Miller to develop, subject to the approval of the Chair and Vice-Chair of the Regulation and Discipline Committee, the working group's charter, the criteria for categories of expertise required of members of the working group to ensure a broad range of interests are represented, and, in consultation with the Supreme Court, the Legislature, and other relevant stakeholders, recommendations for members of the working group by the Board of Trustees at its January 2018 meeting.

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

704 Strategic Plan: Update and Preparatory Discussion for January 2018 Planning Session

In January 2017, the Board of Trustees adopted a five-year Strategic Plan governing the operation of the State Bar. The Strategic Plan set forth ambitious goals and objectives intended to ensure laser focus on the Bar's public protection functions. In July 2017, the Board of Trustees adopted a new Mission Statement for the Bar, further focusing the efforts of the Bar on its licensing, regulation and discipline functions, as well as expressly stating the Bar's role in the advancement of the ethical and competent practice of law and support of efforts for access to justice and diversity in the legal system. In January 2018, the Board will revisit the Strategic Plan, adjust objectives, as appropriate, and develop ideas and action plans for greater efforts to implement the Strategic Plan goals.

Presentation by Donna Hershkowitz for informational purposes only.

705 Contract between the State Bar and the California Bar Foundation

The State Bar sponsors several affinity and insurance programs, offering discounts and other benefits to licensed California attorneys. The State Bar derives revenue from and currently administers these programs. Senate Bill 36 (Jackson, Stats. 2017, ch. 422), which authorizes

licensee fees for 2018, provides that the State Bar may transfer administration of these programs to the California Bar Foundation (the “Foundation”), if approved by the Board of Trustees and the Foundation. Senate Bill 36 further provides a formula for distribution of the revenue received from these programs, starting January 1, 2018. The State Bar wants to avail itself of the opportunity to transfer administration of these programs. This transfer aligns with the fee bill and the State Bar’s revised structure, which is squarely focused on its public protection mission. In order to effectuate this transfer, the State Bar needs to enter into a Memorandum of Understanding (“MOU”) with the Foundation and a Subsidiary of the Foundation, which will be formed to undertake the administration of the programs. At the Board of Trustees meeting on September 7, 2017, staff presented the essential terms and conditions of a proposed MOU to the Board. The Board authorized staff to move forward with negotiations and bring the final terms and conditions of the MOU to the Board for approval. Those negotiations have concluded and there is now a proposed MOU. This Agenda Item seeks the Board’s approval to enter into that MOU. This item also seeks to dissolve the Board’s Professional Liability Insurance Committee. The responsibility for administration of the State Bar’s Professional Liability Insurance Program will transfer to the Foundation, effective January 1, 2018, and the Foundation will be creating the necessary oversight committee, eliminating the need for a State Bar committee to perform this oversight.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees approves the transfer of the administration of the affinity and insurance programs from the State Bar to a Subsidiary of the California Bar Foundation, as set forth in the Memorandum of Understanding attached hereto as Attachment A; and it is

FURTHER RESOLVED, that the Board of Trustees authorizes staff to enter into the Memorandum of Understanding attached hereto as Attachment A; and it is

FURTHER RESOLVED, that the State Bar Professional Liability Insurance Committee is dissolved, effective immediately.

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

706 State Bar Public Records Response Procedures for State Bar Volunteers after California Supreme Court decision in *City of San Jose v. The Superior Court of Santa Clara County* (2017) 2 Cal.5th 608

Effective January 1, 2016, public records maintained by the State Bar of California became available for copy or inspection by members of the public pursuant to the California Public Records Act (“CPRA”). (Gov. Code §§ 6250 et seq.) The CPRA creates a presumptive right of access to any record created or maintained by the State Bar that relates in any way to the business of the State Bar. Every such record must be disclosed unless a statutory exception is

shown. This Item addresses the implications of the Supreme Court's opinion in *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608 and the State Bar's ongoing obligations, including that of volunteers, to search for and produce non-exempt public records upon request.

Presentation by Newton Knowles of the Office of General Counsel for informational purposes only.

707 2018 Schedule of Fees, Penalties, Charges and Deadlines

This item proposes an amendment to 2018 annual licensing fees so as to designate \$2 of the \$315 active attorney mandatory licensing fee, and \$2 of the \$75 inactive attorney mandatory licensing fee, to support Elimination of Bias programs, and therefore making this \$2 amount optionally deductible for each attorney.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees approve that a \$2 deduction from 2018 annual fees be provided to each attorney who elects not to fund State Bar programs that support the elimination of bias; and it is

FURTHER RESOLVED, that the resulting fee scaling calculation changes be applied, as reflected on the attached "Appendix A: Schedule of Charges and Deadlines for 2018" (Attachment A).

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

708 Update on the Ten-Hour New Attorney Training Program

At its October 6, 2017, meeting, the Board of Trustees approved the procurement of an e-learning vendor to consult with the State Bar and to develop ten hours of continuing legal education courses that will implement the State Bar's 10-Hour New Attorney Training Program. This item provides a status report on the project and seeks the Board's concurrence with staff's plan to proceed with the February 1, 2018, start date with less than all of the e-learning modules completed.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees approves the February 1, 2018 start date of the State Bar New Attorney Training program implemented pursuant to Rule 2.53(D) of Title 2, Division 4, Chapter 1 of the Rules of the State Bar, with most but not all of the nine e-learning modules available on that date and provided that any remaining modules will be available, at the latest, on March 1, 2018.

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

709 Proposed Revisions to State Bar of California's Conflict of Interest Code for Designated Employees – Request for Public Comment

This item requests that the Board of Trustees authorize a 45 day public comment period on amendments to the State Bar's Conflict of Interest Code for Designated Employees. The State Bar annually reviews its Code and circulates it for public comment in advance of its application for the upcoming year. Last year the State Bar made material and non-material revisions to the Code. First, it made a material change to the substance of the Code by updating the list of Designated Employees. Second, it made a non-material change to the Code by adopting FPPC Regulation 18730 in place of its customized code. The benefit of adopting the Regulation over a customized code is that the Regulation updates automatically with FPPC changes, not requiring the State Bar to track those changes independently and separately incorporate them into a customized code. This year, the State Bar proposes to amend the Code to update the list of Designated Employees to reflect current circumstances. This includes the addition of new positions subject to the Code (Chief Programs Officer, Chief Court Counsel/Administrator, Chief Administrative Officer, Chief of Mission Advancement & Accountability, and Supervising Attorney) and revised titles for some executive and confidential positions consistent with the Bar's newly adopted classification system. It also includes the updated version of FPPC Regulation 18730. The 45-day public comment period will begin on December 4, 2017 and expire on January 18, 2018. This will allow the amended Code to come before the Board of Trustees for approval at its January 2018 meeting. Implementation of the amendments and distribution of the Code to employees would take place no later than March 1, 2018, with a filing deadline of April 1, 2018.

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 revisions to the State Bar of California's Conflict of Interest Code for Designated Employees in the form attached here; and it is

FURTHER RESOLVED, that this authorization for release for public comment is not, and shall not be construed as an endorsement of the proposed item.

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

The Board of Trustees adjourned its meeting at 3:18 p.m. after reconvening in closed session at 3:04 p.m.

The Board may meet again at the call of the Chair 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 St., 2nd Floor, Room 2A, Los Angeles, CA 90017, on Friday, March 9, 2018, at a time to be determined.

