

## **AGENDA ITEM**

### **MARCH 10 – Board of Trustees – January 27, 2018, Open Minutes**

#### **BOARD OF TRUSTEES MEETING**

Saturday, January 27, 2018

Open Minutes

The State Bar of California

845 S. Figueroa St., 2<sup>nd</sup> Floor, Room 2A, Los Angeles, CA 90017

The Board of Trustees of the State Bar of California convened in open session at 11:08 a.m. at the State Bar of California, 845 S. Figueroa St., 2<sup>nd</sup> Floor, Room 2A, Los Angeles on Saturday, January 27, 2018, Michael Colantuono presiding. Immediately following roll call, the Board reconvened in closed session until 12:20 p.m. The Board of Trustees reconvened in open session at 12:45 p.m. At 2:35 p.m., the Board of Trustees went back into closed session and adjourned at 3:40 p.m.

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

The following members of the Board of Trustees were not present: Jason Lee.

The following members of the staff were present: Louisa Ayrapetyan, Rebecca Farmer, Suzanne Grandt, Kevin Harper, Donna Hershkowitz, Vanessa Holton, Keith Jenkins, Dag MacLeod, Steve Mazer, Amy Nunez, Destie Overpeck 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 were two members of the public who provided comment, Scott Holland and Jennifer Pemberton.

Scott Holland talked about his experience as a client participant in the mandatory fee arbitration system. He prevailed at his fee arbitration and won an award against his former attorney for \$7800. His former attorney is now suing him in superior court for breach of contract. The former attorney has done this three times before, each time after losing to a client at arbitration. The system is being used by his former attorney to inflict harm on the public, contrary to the purpose of the system. Mr. Holland recommends that the fee arbitration award be binding at the client's request, and that an attorney aggrieved by an arbitration award be allowed to file a complaint against the arbitrator rather than take the client to court. Mr. Holland asked to participate in further dialogue about the mandatory fee arbitration system. The Chair thanked Mr. Holland for his comments and advised him to leave his contact information with the nearest staff person.

Jennifer Pemberton talked about her experience as a complainant in the attorney discipline system. Ms. Pemberton said that her former attorney received only a warning letter after having caused substantial harm. Ms. Pemberton believes that a conflict of interest arises when a trade organization is responsible for overseeing serious discipline investigations. The Chair thanked Ms. Pemberton for her comments and informed her that as of January 1, 2018, the State Bar no longer functions as a trade association.

### **30 – Chair’s Report – Oral Report**

Michael Colantuono touched on the following topics in his oral report: (1) Supreme Court appointments of the Chair and Vice Chair, Jason Lee, to serve until the Board of Trustees Annual Meeting in September 2018; (2) two new Senate appointees to the Board of Trustees, Debbie Manning, the public member, and Joshua Perttula, the attorney member; (3) trustee term expirations in 2018; (4) the launch of the California Lawyers Association on January 1, 2018; (5) development of Executive Director – Chair relationship best practices; (6) raising the financial needs of the State Bar to the Legislature; (7) capital improvements at the San Francisco State Bar building; (8) electronic fee billing; (9) preparation of March 2018 Client Security Fund mandated report to Legislature; (10) formation of the Malpractice Insurance Working Group; (11) upcoming Senate confirmation of Chief Trial Counsel Steven Moawad; (12) disbanding of Ad Hoc Transition Committee to assist in transitioning Leah Wilson into her new role as Executive Director; (13) imminent announcement regarding the tentative labor agreement; (14) successful Strategic Planning Session and Admissions and Discipline System training.

### **30 - 1 Board of Trustees Multi-Year Meeting Schedule for 2018 and 2019**

This item would amend the Multi-Year Meeting Schedule for 2018 and 2019, which was approved by the Board of Trustees on November 3, 2017. Meeting dates have been changed for the purpose of spreading Board of Trustee meetings more evenly across the calendar. Meeting dates that have been changed are highlighted in bold on Attachment A to the agenda item.

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

### **40 – Staff Reports**

#### **41 Executive Director**

Leah Wilson touched on the following topics in her oral report: (1) successful Strategic Planning Session; (2) budgetary need for increase in licensing fee, which has not seen an increase in 18 years; (3) announcement of Donna Hershkowitz as Chief of Programs and Dag MacLeod as

Chief of Mission Advancement and Accountability; (4) retirement of Christine Wong; (5) departure of Director of Legal Services Director Rod Fong at the end of February 2018; and (6) recruitment for Chief Financial Officer position.

**1. Report from Executive Director – informational**

**2. Dashboards – informational**

**50 Consent Agenda**

**Item 50-2, 1<sup>st</sup> Annual Report on Use of Outside Counsel for 2017 Calendar Year - informational**

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

**50 - 1 Approval for Specified Contracts per Business and Professions Code Section 6008.6**

**1. For California Bar Examination Sites, with: AEG Management LACC, LLC; CAL EXPO; Crowne Plaza Hotel Burlingame; Doubletree Hotel Westside; Hilton Sacramento Arden West; Holiday Inn South San Francisco; Ontario Convention Center; Ontario Gateway Hotel; Sheraton Mission Valley Hotel**

**2. For California Bar Examination Preparation, with: Research Solutions Group; Michael D. Shore PhD; Douglas E. Tucker, M.D.**

Pursuant to Business and Professions Code section 6008.6, the State Bar shall award no contract for goods, services, or both, for an aggregate amount in excess of fifty thousand dollars (\$50,000), or for information technology goods, services, or both, for an aggregate amount in excess of one hundred thousand dollars (\$100,000), except pursuant to the standards established in Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code and approval of the Board of Trustees. The contracts listed on the agenda item are in excess of \$50,000, and have met the standards established by Article 4 of the Public Contract Code, as implemented through the State Bar's Procurement Policy. These contracts require approval by the Board of Trustees in order to be executed.

RESOLVED, that the Board of Trustees approves execution of the contracts listed herein.

**50 - 4 State Bar of California Conflict of Interest Code for Designated Employees, Proposed Revisions to List of Designated Employees - Return from Public Comment**

The Political Reform Act requires that the State Bar, like other state and local government agencies, adopt a Conflict of Interest Code for officers, employees and consultants who, during the course of their work for the agency, make or participate in making decisions that may have a material impact on the interests defined in the Code. Government Code 87306 requires periodic

revisions of the Code to assure that the list of Designated Employees and Disclosure Categories are accurate. This year, two changes are proposed to the Code. First, staff has reviewed and updated the list of Designated Employees who are subject to reporting requirements. 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. Second, the State Bar made a non-material change to the Code by updating it to be consistent with minor changes to FPPC's Regulation 18730. Regulation 18730 is routinely updated by the FPPC. The updated Code and list of Designated Employees (Appendix A of the Code) were released for a 45-day public comment period. No comments were received during the public comment period. This item requests that the Board of Trustees adopt the revised Code.

RESOLVED, that the Board of Trustees hereby adopts the proposed State Bar of California's Conflict of Interest Code for Designated Employees in the form attached hereto.

#### **50 - 5 Adoption of Proposed Revisions to State Bar Rule 3.244 Re Eligibility to Participate in Lawyer Assistance Program**

At its January 5, 2018 meeting, the Lawyer Assistance Program Oversight Committee adopted amended State Bar Rule 3.244, subject to the Board of Trustees' approval, in order conform the Lawyer Assistance Program rules to amended Business and Professions Code section 6232, which became effective on January 1, 2018. The change to State Bar Rule 3.244 will allow applicants who are in law school to be eligible for the Lawyer Assistance Program. It is recommended that the Board of Trustees approve amended State Bar Rule 3.244.

RESOLVED, that the Board of Trustees approves the proposed amendment to State Bar Rule 3.244 regarding eligibility for the LAP as drafted above.

#### **Item 50-3, Board Book Revisions Re Governance Structure of Board of Trustees**

This item was removed from the consent portion of the agenda and taken up separately for discussion.

On May 15, 2017, the 2017 Governance in the Public Interest 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 a final set of proposed Board Book amendments relating to the subject matters covered by the 2017 Task Force. Before the Board of Trustees for approval are proposed amendments to Tab 2.2, Tab 2.3 and Tab 2.6, which include: (1) comprehensive Amendments to Tab 2.2 – Size and Composition of Board of Trustees and Elimination of Trustee Elections; (2) comprehensive Amendments to Tab 2.3 – Selection and Terms of Officers and Elimination of

Officer Elections; (3) revisions to Amendments to Tab 2.6 – Composition of Board Executive Committee, Adoption and Approval of Board Committee Work Plans, Assignment of Board Book Amendment Approval to Board Executive Committee, Update to Board Committee Structure Chart.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees approve amendments to the Board Book, Tab 2.2, Tab 2.3 and Tab 2.6, as presented to the Board of Trustees this day and as contained in Attachments A, B and C, subject to revisions made by Joanna Mendoza and Sean SeLegue contained on the projection file incorporated herein by reference; and authorize staff to make technical edits and corrections as needed.

No objection having been raised, the Chair substituted the roll call.

#### **110 Board Executive Committee**

##### **111 Criteria for Taking Positions on Legislation and Advancing Legislative Proposals**

The activities of the State Bar, in large part, are governed by the Bar's mission, as well as the strategic plan, which acts as a roadmap for carrying out the Bar's mission. Those important governing principles should also govern the Bar's legislative program. This agenda item seeks the Board of Trustees' confirmation of the purpose of the Bar's legislative program, and the guiding principles for legislation sponsored by the Bar, and legislation on which the Bar may choose to take a position.

Chair of the Board Executive Committee, Michael Colantuono, moved the item, requiring no second. Unanimously adopted, it was

RESOLVED, that the Legislative Program Purpose and Guiding Principles document, set forth as Attachment A, is adopted and shall be used as a guide to assist in determining appropriate legislation to pursue and on which to take formal positions; and it is

FURTHER RESOLVED, that Tab 3.5 of Section 3 of the Board Book be eliminated pending revision to more properly align with the legislative guiding principles document, and Bar and Board of Trustee policies and procedures.

No objection having been raised, the Chair substituted the roll call.

#### **120 Regulation and Discipline Committee**

##### **121 San Francisco District Attorney Request for New Rule of Professional Conduct Re Disclosure of Immigration Status in Open Court**

On August 31, 2017, the Committee on Professional Responsibility and Conduct received a request from the San Francisco District Attorney, George Gascon, 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. On November 2, 2017, the Board of Trustees Committee on Regulation and Discipline ("RAD") assigned this rule request to COPRAC and instructed COPRAC to report its conclusions and recommendations to RAD at the January meeting. This agenda item presents COPRAC's conclusions and recommendations concerning the new rule request. The Committee does not recommend adoption of the rule as proposed and offers three alternative options for consideration.

RESOLVED, that the Board of Trustees assigns the Committee on Professional Responsibility and Conduct to draft [a comment to proposed rule 8.4] [an ethics opinion] [a proposed new Rule of Professional Conduct] that addresses the circumstances when, in connection with a proceeding before a tribunal, a lawyer's public disclosure of an undocumented person's immigration status constitutes a cause for discipline; and it is

FURTHER RESOLVED, that the Committee on Professional Responsibility and Conduct is directed to report back to the Board's Committee on Regulation and Discipline by March 31, 2018, at the latest.

The item was withdrawn, with no action was taken. A letter, attached to these minutes, was received from San Francisco District Attorney George Gascon, which was read into the record. The Chair committed to continuing the dialogue with the San Francisco District Attorney on the shared objective of ensuring access to the courts for all.

## **700 Miscellaneous**

### **701 Credit Card Fee Cost Recovery**

On December 5, 2016, the Board of Trustees adopted State Bar Rule, Title 2, Division 2, Rule 2.18, authorizing the State Bar to implement processing fee cost recovery with respect to the payment of annual licensing fees via credit card or debit card. Staff proposes to extend cost recovery to all payments via credit card or debit card effective February 1, 2018. The State Bar would not charge cost recovery for payments made via electronic funds transfer.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the State Bar is authorized to charge licensees and the public who elect to pay any fee by credit card or debit card a processing fee to defray the costs incurred by that election; and it is

FURTHER RESOLVED, that the State Bar provide an electronic funds transfer payment option for which a processing fee would not be charged.

No objection having been raised, the Chair substituted the roll call.

## **702 Final Proposed 2018 Budget**

On November 2, 2017, the Board of Trustees adopted the 2018 State Bar Preliminary Budget and authorized staff to make technical adjustments and corrections prior to submitting it to the Legislature. No significant adjustments were made and the Preliminary Budget was timely filed. The Board is now asked to adopt the 2018 State Bar Final Budget. The Final Budget is required to be filed by February 15, 2018. In addition to satisfying the statutory requirement, adoption of the Final Budget will serve to finalize the Bar's 2018 spending authority.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees hereby adopts the 2018 Final 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 February 15, 2018.

No objection having been raised, the Chair substituted the roll call.

## **703 Admissions Information Management System Proposed Contract**

The primary computer systems used by the Office of Admissions to manage its business processes are reaching the end of their useful lifespans. The software platform supporting these critical functions of the Bar, the AS/400, was custom-written in the mid-1980s in a proprietary IBM Report Program Generator language. The current production release of the AS/400 is not capable of supporting a number of important functionalities such as workflows, ad-hoc reporting, dashboard analytics or integration with web-based programs. This item summarizes the Business Case for the State Bar of California to enter into two contracts: one with an Information Technology vendor, to purchase the license for software and cloud-based computing services, and another with a Systems Integrator to conduct a business process review and recommend business process changes in the course of implementing the new software. The contracts will allow the Bar to deploy a new Admissions Information Management System for the Office of Admissions, improving the efficiency and effectiveness of test development, examination management, moral character evaluation, and law school regulation.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees approves the contracts with Salesforce.com and Slalom Consulting, as described herein.

No objection having been raised, the Chair substituted the roll call.

#### **704 Proposed Rule of Court Re Fingerprinting Active Licensed Attorneys - Return From Public Comment and Operational Planning and Preparation**

On November 3, 2017, the Board of Trustees authorized a 45-day public comment period for a proposed California Supreme Court rule implementing a fingerprinting requirement for active licensed attorneys pursuant to recent amendments to Bus. & Prof. Code § 6054, effective January 1, 2018. Over 2,600 public comments were received. This agenda item is divided into two major parts. The first part summarizes and responds to the public comments including proposed changes to the rule stemming from the comments received. The proposed changes to the rule do not impact the purpose of the rule, which is to require licensed attorneys to be fingerprinted and to pay the fingerprint processing and furnishing costs in connection therewith. Staff recommends that the Board authorize an additional 30-day public comment period for the amended proposed rule of Court. The second part of this agenda item provides a detailed overview of the work completed to date in preparation for fully implementing the proposed rule by the deadline established by the Board of Trustees of December 1, 2019.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees authorizes staff to make available for a 30-day public comment period, the amended proposed rule to the California Supreme Court included as Attachment 1 to this Agenda Item.

No objection having been raised, the Chair substituted the roll call.

#### **705 Exception to the CalPERS 180 Day Wait Period to Appoint a Retired Annuitant**

To comply with California Public Employee Retirement System 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 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.

Upon motion made, seconded and unanimously adopted, it was

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.

No objection having been raised, the Chair substituted the roll call.

#### **706 Positive Mindset Intervention Memorandum of Understanding**

The State Bar of California and the Productive Mindset Intervention Research Team, which includes Professor Victor D. Quintanilla, Professor Sam Erman, Dr. Mary C. Murphy, and Dr. Gregory Walton, have reached a tentative agreement regarding the terms of an MOU for a productive mindset intervention to improve applicants' performance on the State Bar of California's July 2018 bar exam. The MOU establishes a ten-year relationship between the State Bar of California and the Research Team to share data and conduct analyses for a productive mindset intervention and describes each party's expectations, rights, and responsibilities over the course of this relationship. This is a non-financial agreement.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the State Bar is authorized to enter into an MOU with Professor Victor D. Quintanilla, Professor Sam Erman, Dr. Mary C. Murphy, and Dr. Gregory Walton in order to design and conduct a productive mindset intervention to improve performance on the State Bar of California's July 2018 bar exam.

No objection having been raised, the Chair substituted the roll call.

#### **707 Reflections on Strategic Planning Session**

This item followed from the Board of Trustees' Strategic Planning Session, which occurred over the two days preceding the Board of Trustees' business meeting, and was an opportunity for the Trustees to provide final reflections. The item required no formal action of the Board of Trustees.

At 2:35 p.m., the Board of Trustees reconvened in closed session and adjourned at 3:40 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., 2<sup>nd</sup> Floor, Room 2A, Los Angeles, CA 90017, on Friday, March 9, 2018, at a time to be determined.